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Insurance Laws

Of the State of

Ohio

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Compiled by Department of Insurance

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OHIO INSURANCE LAWS

CHAPTER VIII.

TITLE III—DIVISION II—PART FIRST.

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Sec. 266. [Appointment and term; who ineligible.] The superintendent of insurance shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office for three years; and no person shall be appointed who is not an elector of this state, or who has any official connection with an insurance company, owns any stock in such company, or is interested in the business thereof, except as a policy holder. [69 v. 32, § 2.]

Sec. 267. [Bond to be given, and, with oath of office indorsed thereon, to be filed with the secretary of state.] Before entering upon the discharge of his duties, the superintendent shall give bond to the state in the sum of one hundred thousand dollars with not less than two sureties, to be approved by the governor, conditioned for the faithful discharge of his duties; and the bond, with his oath of office and the approval of the governor endorsed thereon, shall be filed with the secretary of state. [1904, April 26; 69 v. 32, § 3.]

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Sec. 268. [**Duty of superintendent to enforce insurance laws.**] The superintendent shall see to the execution and enforcement of all laws relating to insurance. [69 v. 32, § 3.]

See § 6 of "an act to provide for the incorporation and regulation of companies for insuring their members against loss from death of domestic animals" (86 v. 377, 379), § (3691—6).

See State ex rel. *v.* Moore, 42 O. S. 103-106.

Sec. 269. [**May appoint deputy; oath, bond, etc.**] The superintendent may appoint a deputy superintendent having the same qualifications as the superintendent, whose appointment may be evidenced by a certificate under the official seal of the superintendent. Before entering upon the discharge of his duties, the deputy superintendent shall take the oath of office, and give bond in the sum of ten thousand dollars to the superintendent, with two or more sureties to the acceptance of the superintendent, conditioned for the faithful performance of his official duties.

[**Powers and duties; compensation.**] In case of the absence or inability of the superintendent, the deputy superintendent shall have the powers and perform the duties of the superintendent. The deputy superintendent shall receive a salary of two thousand four hundred dollars per annum.

[**Fees payable by foreign insurance companies for the making out and forwarding of interest checks and coupons.**] Foreign insurance companies shall pay, annually, as fees for making out and forwarding annually, semi-annually and quarterly the interest checks and coupons accruing upon bonds and securities deposited, the sum of twenty-five dollars on each one hundred thousand dollars so deposited, which fees shall be turned over to the state treasurer on the warrant of the state auditor.

[**Clerks and experts.**] The superintendent may employ from time to time such other clerks as the prompt dispatch of business requires; and he may, also, from time to time, employ skilled and competent persons to examine the business and affairs of insurance companies and report thereon. [95 v. 549; 93 v. 292; R. S. of 1880; 69 v. 32, § 4.]

See State ex rel. v. Moore, 42 O. S. 103-106.

Sec. 270. [**Insurance department; expenditures, salaries; fees of superintendent.**] The office of the superintendent shall be in the state house, and all salaries and expenditures of the insurance department shall be paid out of the state treasury in excess of the amount collected from insurance companies, as provided by law; and provided, also, that, in case the excess of fees collected and paid into the state treasury, as provided by section two hundred and eighty-two, Revised Statutes of Ohio, over the total salaries and expenditures of said insurance department, shall equal the sum of fifteen thousand dollars, the said superintendent of insurance shall receive, out of said excess

of fees, a sum not exceeding ten per centum on such excess; provided, that said superintendent shall not receive in such fees exceeding the sum of one thousand dollars per annum in addition to his salary, as now provided by law;

[**Fees to be paid into state treasury.**] provided further, that all fees shall be paid by the superintendent of insurance into the state treasury on the warrant of the state auditor. And the said additional salary, so provided, shall be paid under appropriations, by the state treasurer, upon the warrant of the state auditor. [95 v. 549; 93 v. 292; R. S. of 1880; 69 v. 32, § 4.]

Sec. 271. [**Instruments under superintendent's seal to be evidence, and entitled to record.**] Any certificate, assignment, or conveyance, executed by the superintendent in pursuance of law, and sealed with his seal of office, shall be received as evidence, and may be recorded in the proper recording office in the same manner and with like effect as a deed regularly acknowledged before an officer authorized by law to take acknowledgments of deeds; and all copies of papers in the office of the superintendent, certified by him and authenticated by the seal, shall in all cases be evidence equally and in like manner as the originals. [69 v. 32, § 5.]

Sec. 272. [**Examination of companies doing business in this state.**] The superintendent may make, or cause to be made by some person by him for that purpose appointed, an examination into the affairs of any insurance company doing business in this state, whether incorporated in this state or not; and such company, its officers and agents shall submit their books and business to such examination, and in every way facilitate the same, and he shall, annually, make or cause to be made, an examination of the assets of every life insurance company organized under the laws of this state, and ascertain if the same are invested in the manner prescribed by law at the date each investment was made, and, also, if the last preceding annual statement of assets and unpaid death claims was correct. The actual expenses incurred by said examinations shall be paid by the state treasurer on the warrant of the state auditor upon the certificate of the superintendent of insurance; provided that, when any examination is made upon the demand of the company therefor, the expenses of the same shall be paid by the company; and provided further, that, when, by the laws of any other state, district, territory or nation, examinations of companies of this state are required or permitted to be made by the insurance department or other authority of such state, district, territory or nation at the expense of such companies, then the expenses of all examinations made by the insurance department of this state of all companies of such state, district, terri-

tory or nation shall be respectively charged to and collected from the companies so examined. [1904, April 25; 95 v. 550; R. S. of 1880; 75 v. 576, § 7; 69 v. 32, § 12.]

If it shall at any time appear to the superintendent of insurance, upon satisfactory evidence, that an insurance company not organized under the laws of this state, but transacting business within it, is in an "unsound condition," it is his duty to revoke the authority granted to such company (§ 277), and from his decision there is no appeal: State ex rel. Insurance Co. *v.* Moore, 42 O. S. 103.

Companies chartered before the present constitution are amenable to this section: State ex rel. *v.* Eagle Ins. Co., 50 O. S. 252, 269; aff'd. 153 U. S. 446.

Sec. 273. [Power of examiners; may publish result.] For the purposes of such examination, the superintendent, or the person or persons so appointed by him, have power to administer oaths to and examine the officers and agents of such company relating to its business and affairs; and when the superintendent deems it to the interest of the public, he may publish the result of such investigation in a newspaper printed in Columbus, and of general circulation in the state, and in one printed in the county where the principal office of such company is located. [69 v. 32, § 8.]

Sec. 274. [Proceedings against unsound companies.] When it appears to the superintendent, from examination, or otherwise, that the assets of any insurance company organized under the laws of this state after deducting therefrom all liabilities, including reinsurance reserve or unearned premium fund computed according to the laws of this state, are reduced twenty per cent. or more below the capital required by law, he shall require such company to restore such deficiency within such period as he designates in such requisition. In case such deficiency is more than forty per cent. of the capital required by law, it shall be unlawful for such company to issue any new policies or transact any new business until the superintendent of insurance issues to such company a license authorizing it to resume business, or until the court has rendered its decision in the case as provided in section two hundred and seventy-six, Revised Statutes. In case such deficiency is more than twenty per cent. and less than forty per cent. of the capital required by law and the officers of the company certify that the deficiency will be restored by the company, then it will be lawful for the company to continue business as before the issuing of the requisition for the term of thirty days from the date thereof, and if at the expiration of the thirty days any portion of the deficiency is not restored, the company shall not issue any new policies or transact any new business until authorized by the superintendent, or until the court has rendered its decision in the case as provided in section two hundred and seventy-six, Revised Statutes. [1904, April 25; 70 v. 165, § 9.]

In making its return for taxation, an insurance company is not entitled to deduct from its "claims and demands" a sum equal to fifty per cent. of all premiums on unexpired policies, and designated as "reinsurance fund" in § 274, and as "unearned premiums" in § 3648, of the Revised Statutes: Insurance Co. *v.* Cappeller, 38 O. S. 567, 568.

A stockholder who has failed to pay an assessment made in pursuance of this section, is not entitled to subsequent dividends until he has paid the assessment. The company may credit such dividends against the unpaid assessment: Rhodes *v.* Equitable Accident Ins. Co., 3 C. C. 501.

Sec. 275. [**In relation to unsound mutual insurance companies.**] If upon examination, or otherwise, it appears to the superintendent that the funds and assets (other than contingent liability) of any company organized on the plan of mutual insurance, after deducting therefrom a reinsurance reserve fund computed in accordance with the law, are less than its liabilities, such company shall be deemed to have impaired its capital, and when such impairment shall exceed twenty-five per cent. of such reinsurance reserve fund, the superintendent shall require such company to make an assessment as provided in section thirty-six hundred and fifty Revised Statutes, for the amount needed to pay its incurred losses and expenses, and to make good the reinsurance reserve fund required by law, upon its members liable to assessment therefor in proportion to their several liabilities, to be paid within such period as the superintendent shall name in such requisition. In case such impairment is more than forty per cent. of such reinsurance reserve fund, it shall be unlawful for such company to issue any new policies or transact any new business until the superintendent issues to such company a license authorizing it to resume business, or until the court has rendered its decision in the case as provided in section two hundred and seventy-six, Revised Statutes. In case such impairment is more than twenty-five per cent. and less than forty per cent. of such reinsurance reserve fund, and the officers of the company certify that such impairment will be restored, then it will be lawful for the company to continue business as before the issuing of the requisition, for the term of thirty days from the date thereof, and if at the expiration of the thirty days any portion of the impairment is not restored the companies shall not issue any new policies or transact any new business until authorized by the superintendent, or until the court has rendered its decision in the case as provided in section two hundred and seventy-six, Revised Statutes; and the trustees or directors of such company are hereby made personally liable for any losses which are sustained upon risks taken after the superintendent of insurance has issued his requisition for filling up the deficiency in the assets, and before such deficiency is made up, but nothing herein shall be so construed as to require any mutual fire insurance company to keep on hand any cash reinsurance reserve or funds invested in securities, other than their premium notes, when the premium notes amount in gross to three per centum of the amount at risk by the company. [1904, April 25; 70 v. 165, § 11.]

Sec. 276. [**Procedure in case of default to comply with requisition.**] In case of default on the part of any company to comply with any such requisition made by the superintendent of insurance, in pursuance of sections two hundred and seventy-four or two hundred and seventy-five Revised Statutes, the superintendent shall communi-

cate the fact to the attorney general, who shall apply to the court of common pleas of the county in which the principal office of the company is located for an order requiring such company to show cause why the business thereof should not be closed, and shall give to the company such notice of the pending of such application as the court directs, and the court shall thereupon proceed to hear the allegations and proof of the respective parties; or, the court shall have power to refer the application of the attorney general to a referee, to inquire into and report upon the facts stated therein. In case it appears to the satisfaction of the court that the assets of the company are not sufficient, as aforesaid, or that the interest of the public so require, the court shall decree a dissolution of the company and a distribution of its effects, and any transfer of stock of a company made during the pendency of such investigation shall not release the party making the transfer from his liability for losses which have occurred previous to the transfer. [1904, April 25; 70 v. 165, § 10.]

Sec. 277. [**Revocation of authority to such companies.**] When it appears to the superintendent of insurance, from the report of the person appointed by him, or other satisfactory evidence, that the affairs of any company, partnership, or association, not organized under the laws of this state, are in an unsound condition, he shall revoke the authority granted to such company to do business in this state, and cause a notice thereof to be published in at least one newspaper published in the city of Columbus, and in the county where the general agency is located within this state; and after the publication of such notice, it is unlawful for the agents of such company to procure any new applications for insurance or to issue any new policies. [69 v. 32, § 12.]

See State ex rel. v. Moore, 42 O. S. 103-106.

Sec. 278. [**Record of proceedings and report thereof.**] The superintendent shall keep and preserve, in a permanent form, a full record of his proceedings, including a concise statement of the condition of each company reported, visited, or examined by him; and he shall, annually, at the earliest practicable date after the returns are received from the several companies, make a report to the legislature of the general conduct and condition of the insurance companies doing business in this state, with such suggestions as he deems expedient including also the information contained in the statements required of the companies, and the result of the official valuations of life policies, to be arranged in tabular form, and prepare the same for printing in two separate reports, one pertaining to life insurance companies, and the other to all insurance companies other than life; and he shall also report the names and compensation of the clerks employed by him, the whole amount of income, the source whence derived, and the

expenses in detail, during the year ending on the thirty-first day of the preceding December. [69 v. 32, § 13.]

Sec. 279. [Annual valuations, rate of interest, etc.; exception.] The superintendent shall, annually, make or cause to be made, net valuations of all outstanding policies, additions thereto, unpaid dividends, and all other obligations of every life insurance company transacting business in this state; and for the purpose of such valuations, and for making special examinations of the condition of life insurance companies, as provided in the laws of this state relating to life insurance companies, and for valuing all policies of whatever description, and for any purpose whatever, the rate of interest shall be four per cent. per annum, and the rate of mortality shall be established by the tables known as the American Experience Tables, but such valuations may be made according to the standards of valuation adopted by the company for the obligations to be valued, provided the total valuation determined by any such standards for the obligations for which they have been adopted shall not be less than that determined by the legal minimum standard herein prescribed, but when the laws of any other state of the United States authorize a valuation of life insurance policies, by some designated state officer, according to the standard herein provided, or according to any other standard which makes the value of the policy not less than that of the standard herein provided, the valuation made according to the said standard, by such officer of the policies and other obligations of any life insurance company not organized under the laws of this state, and certified by said officer, may be received as true and correct, and no further valuation of the same shall be required of such company by the superintendent of insurance, except that in no case shall the superintendent of insurance accept the certificate of valuation of such officer of another state of the United States, when such officer does not accept, or refuses or fails to accept a like certificate from him of the valuation of the policies of any life insurance company incorporated under the laws of Ohio; or when any such officer of another state is prohibited by law from accepting the certificate of valuation of the superintendent of insurance of this state, the said superintendent shall forthwith require the officers of all companies located in such state to submit to him within a reasonable time, the descriptions of the policies thereof for valuation, and he shall proceed to make, or cause to be made, a valuation thereof according to the standard herein named, and in case said descriptions are not submitted to the said superintendent within the time fixed by him, he shall revoke the license of such company or companies as shall fail to do so and shall refuse to renew the same until such descriptions shall be submitted and a valuation by him shall have

been completed. [1904, April 26; 1889, February 7; 86 v. 11; Rev. Stat. 1880; 75 v. 580, § 14.]

See § 2745 as to further duties of superintendent regarding foreign insurance companies.

See note to State ex rel. *v.* Reinmund, 45 O. S. 214, under § 282.

Sec. 280. [**Forms of statements to be furnished.**] The superintendent shall, annually, in November, furnish to the insurance companies doing business in this state, two or more printed copies of the forms of statements required by law to be made by them, and he may make such changes, from time to time, in the forms of the same, and such additions thereto, as seem to him best adapted to elicit from the companies a true exhibit of their conditions. [1904, April 24; 69 v. 32, § 15.]

Sec. 281. [**Securities shall be deposited in the state treasury.**] All securities deposited with the superintendent of insurance, pursuant to the provisions of any law of the state, shall be deposited by him with the treasurer of state, who, with his sureties shall be responsible for the safe-keeping thereof; and the treasurer shall only deliver such securities, or coupons attached thereto, upon the written order of the superintendent of insurance. No security shall be accepted for deposit by the superintendent of insurance, unless the same is of par market value of one thousand dollars or more. [1904, April 25; 70 v. 165, § 16.]

See § 3631*a*.

(281—1) Sec. 1. [**Providing method of procedure for collecting claims payable from funds deposited with superintendent of insurance or other state officer.**] If any company, corporation, or association, which may by the statutes of this state, be required to make a deposit with the superintendent of insurance, or other state officer, for the purpose of securing the contracts of such company, corporation, or association, or for any other purpose, shall fail to pay any of its liabilities upon such contracts, or other obligations, for which such deposit has been made, according to the terms of such contract, or other obligation, after the liability thereon shall have been determined; or if such company, corporation, or association has ceased to do business within this state, leaving unpaid any such liability, or has become insolvent, the attorney general of the state, on behalf of the superintendent of insurance, or such other officer, shall, upon the application of any party entitled to participate in such deposit, or the proceeds arising therefrom, commence a civil action in the court of common pleas of Franklin county, Ohio, to determine the rights of all parties claiming any interest in such deposit, to subject such deposit to the payment or satisfaction of all liability or liabilities and to distribute said fund among the persons entitled thereto, making

the company, corporation, or association a party defendant. Said action shall be brought by the attorney general, but for such services he shall receive no compensation other than the salary provided for by section 1284 of the Revised Statutes of Ohio. [95 v. 480, May 10, 1902.]

(281—2) **Sec. 2.** [**Notice to parties interested in said fund; publication of.**] That upon the filing of such petition, the superintendent of insurance, or such other officer, shall cause a notice thereof to be published for six consecutive weeks in three papers of general circulation within the state of Ohio, one of which shall be published in the city of Columbus, Ohio, which notice shall contain a succinct statement of the object and prayer of said petition, and notifying all persons claiming to have any interest in said fund, to intervene and set forth such interest therein, and when they are required to answer thereto.

[**Notice to company.**] A copy of such notice shall be forwarded to the last known address of such company, corporation, or association, by the clerk of said court as provided for in section 5048, Revised Statutes. Upon the hearing of said cause, such order, judgment, or decree shall be entered by the court as may be deemed just and equitable. [95 v. 481, May 10, 1902.]

(281—3) **Sec. 3.** [**Procedure.**] The code of civil procedure shall govern such proceedings in so far as the same may be applicable. [95 v. 481, May 10, 1902.]

Sec. 282. [**Fees to be paid by companies.**] There shall be paid by every insurance company doing business in this state, to the superintendent of insurance, the following fees: For filing copy of its charter or deed of settlement, twenty-five dollars; for filing each statement, twenty dollars; for each certificate of authority, or license and certified copy thereof, two dollars; for each copy of a paper filed in his office, the sum of twenty cents per folio; and for affixing the seal of office and certifying any paper, one dollar; all of which fees shall be paid by the superintendent into the state treasury. There shall also be paid by every life insurance company doing business in this state, annually, by way of compensation for the valuation of its policies, in case no certified valuation of the same has been furnished to the superintendent of insurance, as provided in section 279 of the Revised Statutes of Ohio, one cent on every one thousand dollars insured by it on lives, which shall be paid by the superintendent of insurance into the state treasury. When by the laws of any other state or nation, any taxes, fines, penalties, license fees, deposits of money, or of [securities], certificates, or other obligations or prohibitions are imposed on insurance companies of this state, doing business in such

state or nation, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all insurance companies of such other state or nation, doing business within this state, and upon their agents here. [95 v. 550; 89 v. 167; 88 v. 196; R. S. of 1880; 69 v. 32, § 17.]

See § 3631*a*.

As to when the last clause of this section is operative, see note to State ex rel. *v.* Reinmund, 45 O. S. 214, under § 2745.

The compensation for the valuation of policies, provided for in this section, can not be exacted when the foreign company has furnished the certificate provided for in § 279, notwithstanding such company has paid a like charge in former years: *Ib.*

This section is retaliatory and therefor to be confined to cases fairly within it: State ex rel. *v.* Ins. Co., 49 O. S. 440.

Sec. 283. [**License, etc., of persons making application for insurance.**] It shall be unlawful for any person, company or corporation in this state, either to procure, receive, or forward applications for insurance in any company or companies not organized under the laws of this state, or in any manner to aid in the transaction of the business of insurance with any such company, unless duly authorized by such company and unless duly licensed by the superintendent of insurance. [1904, April 25; 69 v. 32, § 18.]

Does not apply to adjusters, nor to bookkeepers, stenographers or agents who do not solicit or issue insurance. Does apply to sub-agents and solicitors. (Ins. Sup. Ruling, 1900.

Sec. 283*a*. [**Licenses prohibited residents of states refusing licenses to residents of this state.**] No license shall be issued by the superintendent of insurance to any person as agent of an insurance company, when such person is a resident of any state, where, by the laws thereof, residents of this state are prohibited from acting as agents of insurance companies in such state; and when the superintendent of insurance is satisfied that any person holding a license as such agent is a resident of such state he shall revoke such license. [1904, April 22.]

Sec. 284. [**Annual publication of certificate required.**] The superintendent of insurance shall, annually, issue to each insurance company and association, which he finds should be authorized to do business in this state, upon its complying with the law and filing its annual statement or as soon thereafter as the same can be done, his certificate reciting that it has in all respects complied with the laws of this state applicable to it, and also the actual amount of paid up capital, the aggregate amount of its assets and liabilities, together with its aggregate income and expenditures for the preceding year, as shown by the annual statement of the company or association for that year, filed with and accepted by the superintendent, and he shall issue to any newly applying company or association, which he finds should be authorized to do business in this state, such certificate reciting its compliance with the laws applicable to it and the aggregate amount of its assets and liabilities, together with its aggregate income and expenditures as shown by the financial statement submitted by it under

oath of its officers and accepted by the superintendent. All such certificates of authority and all licenses of companies and agents shall expire, as to companies organized or admitted to do business under the provisions of Chapter X, Title II, Division II, Part II, Revised Statutes, on the first day of April next after they are issued, and as to companies organized or admitted to do business under the provisions of Chapter XI, Title II, Division II, Part II of Revised Statutes, on the first day of March next after they are issued.

Each such company and association not incorporated under the laws of the state of Ohio, shall file a copy of such certificate, duly certified by the superintendent, with the recorder of each county in which it has an agency before doing business in such county under authority of such certificate. For filing each such certificate and each license, the recorder shall be entitled to ten cents.

Each such company and association not incorporated under the laws of the state of Ohio, shall at least once a year, and before the time for making its report as hereinafter required, publish such certificate in every county where it has an agency in a newspaper published and of general circulation in the county, and having the certificate of the superintendent herein authorized. No newspaper shall be deemed a newspaper of general circulation, as herein defined, unless it shall have a circulation in the county in which it is published as follows: Counties having population of 30,000, or less, six hundred; counties having population of 50,000, or less, and more than 30,000, eight hundred; counties having population of 100,000, or less, and more than 50,000, twelve hundred; counties having population of 150,000, or less, and more than 100,000, two thousand; counties having population of more than 150,000, three thousand; the population being that shown by the last preceding Federal census, and unless it is published in the English language and has been established for one year. Before making publication of any certificate, as herein provided, the manager, editor or proprietor of a newspaper shall certify under oath to the superintendent of insurance, on blank form to be prepared and, on applications to be furnished by him, the information required for determining whether it is a newspaper of general circulation, as defined herein, and receive his certificate reciting that the newspaper is one of such general circulation.

Every such company and association not incorporated under the laws of the state of Ohio, shall on or before October first of each year file with the superintendent of insurance its report, in writing, under oath of its president or secretary, setting forth the counties in which such publications were made, the counties in which it had agencies at the time of such publications, and the names of the newspapers in

which the publications were made, and shall attach as an exhibit thereto a copy of the certificate so published. The superintendent shall prepare and, upon application therefor, shall furnish to such companies and associations blank forms for such reports. If any such company or association shall fail to comply with this Act, the superintendent shall suspend its authority to do business in the county where it is not shown by such report that such publication has been made, until such publication is made. If, however, it appear that such publication has not been made in any county, through mistake or oversight, then such authority in such county shall not be suspended but shall be continued, provided such publication so omitted shall be made within such time as shall be designated by the superintendent. No publication shall be approved by the superintendent in any newspaper, which he has not prior to the publication, certified is a newspaper published and of general circulation in the county, provided that if publication shall have been made in any such newspaper and a report, as herein provided, shall be filed and the certificate of the superintendent procured within such time as he may designate, then publication in such newspaper shall be approved. The superintendent shall keep a book in which shall be recorded the names of the newspapers, which have been so certified as newspapers of general circulation, and such book shall be open to the inspection of any such company or association. Every such certificate of circulation shall continue in force until revoked, and the superintendent shall, whenever he deems proper, demand further certificates from the managers, editors or proprietors of any newspaper holding such certificate. [1904, April 25; 69 v. 32, §§ 19, 21; (S. & S. 227).]

Sec. 285. [Foreign insurance companies may appoint agents, etc.] Any insurance company not organized under the laws of this state may appoint one or more general agents, by resolution of its board of directors or managers, with authority to appoint other agents of the company in this state, a certified copy of which resolution shall be filed with the superintendent of insurance; and agents of such company, appointed by such general agent, shall be held to be the agents of such company as fully, to all intents and purposes, as if they were appointed directly by the company; and agents for any such company in this state may be appointed by the president, vice president, chief manager, or secretary thereof, in writing, with or without the seal of the company, and when so appointed shall be held to be the agents of such company as fully as if appointed by the board of directors or managers in the most formal mode. [1904, April 22; 69 v. 32, § 20.]

Appointment of general agent not required but company may appoint if it desires. (Ins. Supt. Ruling, 1901.)

Sec. 286. [**Discontinuance of business by life insurance company.**] When any life insurance company transacting the business of insurance within the state of Ohio, desires to discontinue its business, the superintendent shall, upon application of such company, or association, give notice of such intention in a paper published and having general circulation in the county in which such company or its general agency is located, at least once a week for six weeks, the expenses of publication to be paid by the company. After such publication, the superintendent shall deliver up to such company, or association, the securities held by him belonging to it, on being satisfied by the exhibition of the books and papers of such company, or association, and on examination to be made by himself, or some competent disinterested person or persons, to be appointed by him, and upon the oath of the president or principal officer, and the secretary or actuary of the same, that all debts and liabilities of every kind are paid and extinguished, that are due, or may become due, upon any contract or agreement made with any citizen or resident of the United States; and the superintendent may also, from time to time, deliver up to such company, or association, or its assigns, any portion of said securities, on being satisfied that an equal proportion of the debts and liabilities, of every kind, that are due, or may become due, upon any contract or agreement made with any citizen or resident of the United States, by said company, or association, has been satisfied; but the amount of securities retained by him shall not be less than twice the amount of remaining liabilities. [69 v. 32, § 22.]

Sec. 286*a*. [**Discontinuance and withdrawal of securities by company other than life.**] When any insurance company or corporation other than life, which has made, or hereafter shall make, a deposit with the superintendent of insurance, intends to discontinue its business in Ohio, the superintendent shall, upon application of such company or corporation, give notice of such intention in three newspapers of general circulation in the state at least once a week for six weeks, the expense of such publication to be paid by the company. After such publication, and on being satisfied by the affidavit of the principal officers of the company and by an examination of the books and records of the company or corporation to be made by him or some competent disinterested person or persons by him appointed for that purpose, if such examination be by him deemed necessary, that all debts and liabilities of every kind that the deposit is made to secure, or that may become due on any policy issued to any resident or citizen of the state of Ohio, are fully paid off, satisfied and discharged, the superintendent shall deliver up to such company or corporation or its assigns the securities held by him belonging to it. [90 v. 103.]

Sec. 287. [**Applicable to companies under laws of the United States.**] All the provisions of this chapter relating to insurance companies organized under the laws of any other state of the United States shall apply to any company organized under the laws of the United States, for any of the purposes specified in this chapter; and all the provisions of this chapter relating to agents of companies organized under the laws of any state shall apply to the agents of such companies organized under the laws of the United States; and any violation of the provisions of this chapter by any person, or agent, in the employment of any such company, organized under the laws of the United States, shall subject the offender to the same penalties provided by this chapter for any violation of its provisions by persons acting for similar companies organized under the laws of any other state of the United States. [69 v. 32, § 23.]

Sec. 288. [**Penalty for violation of statutory provisions relating to insurance companies.**] Any person who violates any of the provisions of this chapter, or of any insurance law of this state for the violation of which no penalty is elsewhere provided, shall be fined not more than one thousand dollars or imprisoned not more than six months, or both. Any corporation, company or association violating any of the provisions of this chapter, or of any insurance law of this state for the violation of which no penalty is elsewhere provided, shall be liable to a penalty of not more than one thousand dollars nor less than one hundred dollars, to be recovered by action in the name of the state, and on collection paid to the superintendent of insurance to be covered by him into the state treasury. [91 v. 331; 82 v. 138, Revised Statutes 1880; 69 v. 32, § 24.]

Cited State ex rel. *v.* Ackerman, 51 O. S. 163, 193.

Sec. 289. [**When insurance business unlawful.**] The provisions of this chapter shall apply to individuals and parties, and to all companies and associations, whether incorporated or not, now or hereafter engaged in the business of insurance; and it is unlawful for any company, corporation, or association, whether organized in this state or elsewhere, either directly or indirectly, to engage in the business of insurance, or to enter into any contracts substantially amounting to insurance, or in any manner to aid therein, in this state, or to engage in the business of guaranteeing against liability, loss or damage, unless the same is expressly authorized by the statutes of this state, and such statutes and all laws regulating the same and applicable thereto have been complied with; provided that nothing in this chapter, or in any other statute of the state of Ohio pertaining to insurance, shall so operate or be construed as to apply to the establishment and maintenance by individuals, associations or corporations, of sanatoriums or hospitals for the reception and care of patients for the medical,

surgical or hygienic treatment of any and all diseases, or for the instruction of nurses in the care and treatment of diseases and in hygiene, or for any and all said purposes, nor to the furnishing of any or all of said services, care or instruction in or in connection with any such institution, under or by virtue of any contract made for such purposes, with residence of the county in which such sanatorium or hospital is located. [1904, April 23; 95 v. 553; R. S. of 1880; 69 v. 32, § 25.]

See note to State *v.* Aetna Life Insurance Co., 69 O. S., under § 3596.

CHAPTER XXIV.

TITLE III—DIVISION II—PART FIRST.

STATE FIRE MARSHAL.

SECTION.
409—50. Appointment of state fire marshal; term; removal; deputies and their duties; vacancies.
409—51. Duties of marshal in connection with other officers to investigate fires; notification of fire to marshal; record of fires.
409—52. Testimony under oath; arrest of suspected person; report to insurance commissioner.
409—53. Power of marshal and deputies to summon and enforce attendance of witnesses; false swearing; contempt; power to enter buildings; investigation may be in private.
SECTION.
409—54. Right of marshal and other officers upon complaint to enter buildings for purposes of investigation; may order removal of inflammable or explosive material; right of appeal of aggrieved person; penalty for non-compliance.
409—55. Penalty for neglect of official duty.
409—56. Salaries of marshal and assistants; tax on insurance companies to defray expenses of department; itemized statement of expenses.
409—57. Marshal not to engage in other business; attendance at office.
409—58. Annual report.
409—59. Compensation of various officers for reporting fires.

Sec. 409—50. [**Appointment; term; removal.**] That the governor is hereby authorized and empowered to appoint within sixty days after this act shall take effect, and every two (2) years thereafter, between the 15th day of January and the first day of February, by and with the advice and consent of the senate, and also within thirty days after the occurance of the vacancy in the office, a suitable person who shall be a citizen of this state, as state fire marshal, who shall hold (the) office until his successor is appointed and qualified, the title of which office shall be state fire marshal. Such officer shall keep his office at the capitol, in the city of Columbus, and may be removed for cause at any time by the governor.

[**Appointment of deputies and assistant; their duties.**] The state fire marshal is hereby empowered and required to appoint two deputy fire marshals, to be designated as first and second deputies, and one chief assistant. The duties of said deputies and chief assistant shall be to assist the state fire marshal, and such appointees may be removed for cause by the said fire marshal.

[**Vacancies.**] In the event of a vacancy in the office of fire marshal, or during the absence or disability of that officer the first deputy marshal shall perform the duties of the office. [95 v. 471; 94 v. 386.]

Sec. 409—51. [**Duty of marshal in connection with other officers to investigate fires.**] The state fire marshal and the chief of the fire department of every city or village in which a fire department is established, and the mayor of every incorporated village or town in

which no fire department exists, and the township clerk of every organized township without the limits of any organized village or city, shall investigate the cause, origin and circumstance of every fire occurring in such city, village, town or township by which property has been destroyed or damaged, and shall especially make investigation as to whether such fire was the result of carelessness or design. Such investigation shall be begun within two days, not including the Sunday of the occurrence of such fire, and the fire marshal shall have the right to supervise and direct such investigation whenever he deems it expedient or necessary.

[**Notification to marshal of fire.**] The officer making investigation of fires occurring in cities, villages, towns or townships shall forthwith notify said fire marshal, and shall within one week of the occurrence of the fire, furnish to the said fire marshal a written statement of all facts relating to the cause and origin of the fire, and such other information as may be called for by the blanks provided by the said fire marshal.

[**Record of fires.**] The state fire marshal shall keep in his office a record of all fires occurring in the state, together with all facts, statistics and circumstances, including the origin of the fires, which may be determined by the investigations provided by this act; such record shall at all times be open to the public inspection, and such portions of it as the insurance commissioner may deem necessary shall be transcribed and forwarded to him within fifteen days from the first day of January of each year. [95 v. 472; 94 v. 387.]

Sec. 409—52. [**Testimony under oath.**] The state fire marshal shall, when in his opinion, further investigation is necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter as to which an examination is herein required to be made, and shall cause the same to be reduced to writing;

[**Arrest of suspected person.**] and if he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, he shall cause such person to be arrested and charged with such offiense, and shall furnish to the proper prosecuting attorney all such evidence, together with the names of witnesses and all the information obtained by him, including a copy of all pertinent and material testimony taken in the case;

[**Report to insurance commissioner.**] and shall report to the insurance commissioner, as often as such commissioner shall require, his proceedings and the progress made in all prosecutions for arson, and the result of all cases which are finally disposed of. [95 v. 472; 94 v. 387.]

Sec. 409—53. [**Power of marshal, deputies and assistant to summon and compel attendance of witnesses.**] The state fire marshal, deputy state fire marshals, and chief assistant fire marshal, shall each have power in any county in the state of Ohio, to summon and compel the attendance of witnesses before them, or either of them, to testify in relation to any matter which is by the provisions of this act a subject of inquiry and investigation; and may require the production of any book, paper, or document, deemed pertinent thereto by them or either of them.

[**Oaths; false swearing; contempt.**] Said state fire marshal, deputy state fire marshals and chief assistant fire marshal are each hereby authorized and empowered to administer oaths and affirmations to any persons appearing as witnesses before them; and false swearing in any matter or proceeding aforesaid, shall be deemed perjury, and shall be punished as such. Any witness who refuses to be sworn, or who refuses to testify, or who disobeys any lawful order of said state fire marshal, deputy state fire marshal, or chief assistant fire marshal, or who fails or refuses to produce any book, paper, or document, touching any matter under examination, or who is guilty of any contemptuous conduct, after being summoned by them, or either of them, to appear before them, or either of them, to give testimony in relation to any matter or subject under investigation as aforesaid, may be summarily punished by said state fire marshal, deputy state fire marshals, or chief assistant fire marshal, as for contempt, by a fine in a sum not exceeding one hundred dollars ($100.00), or be committed to the county jail until such time as such person may be willing to comply with any order made by said state fire marshal, deputy state fire marshals, or chief assistant fire marshal, as provided in this act.

[**Power to enter buildings.**] Said state fire marshal and his subordinates, or either of them, shall have the authority at all times of day and night in the performance of the duties imposed by the provisions of this act, to enter upon and examine any building or premises where any fire has occurred, and other buildings and premises adjoining or near the same.

[**Investigation may be private.**] All investigations held by, or under the direction of said state fire marshal may, in his discretion be private, and persons other than those required to be present by the provisions of this act, may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other, and not allowed to communicate with each other until they have been examined. [95 v. 473; 94 v. 387.]

Sec. 409—54. [**Right of marshal and other officers upon complaint to enter buildings for purposes of investigation.**] The state fire marshal, his deputies and assistants, the chief of fire department of all villages and cities where a fire department is established, and the mayor of cities or villages where no fire department exists, and the clerks of each township in the territory without the limits of an organized city or village, upon complaint of any person having an interest in any building or property adjacent, and without any complaint, shall have a right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises within their jurisdiction.

[**May order repair of building or removal of inflammable or explosive material.**] Whenever any of said officers shall find any building, or other structure, which, for want of proper repair, or by reason of age and delapidated condition, or for any cause, is especially liable to fire, and which is so situated as to endanger other buildings or property, and whenever any of such officers shall find in any building, or upon any premises, combustible or explosive material, or inflammable conditions, dangerous to the safety of said buildings or premises, they shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said building or premises;

[**Right of aggrieved person to appeal to state fire marshal.**] provided, however, that if the said occupant or owner shall deem himself aggrieved by such order, he may, within twenty-four hours appeal to the state fire marshal, and the cause of the complaint shall be at once investigated by the direction of the latter, and unless by his authority the order is revoked, such order shall remain in force and be forthwith complied with by said owner or occupant.

[**Penalty for non-compliance.**] Any owner or occupant of buildings or premises failing to comply with the orders of the authorities, above specified, shall be punished by a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for each day's neglect. [95 v. 473; 94 v. 388.]

Sec. 409—55. [**Penalty for neglect of official duty.**] Any officer referred to in section 409-51 herein, who neglects to comply with any of (the) requirements of this act shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars. [95 v. 474; 94 v. 388.]

Sec. 409—56. [**Salaries of marshal and assistants.**] The state fire marshal shall receive an annual salary of $3,000, and the first deputy fire marshal $1,800, and the second deputy fire marshal $1,500. Said fire marshal shall employ clerks and assistants and incur such

other expense as may be necessary in the performance of the duties of his office, not to exceed, including salaries, such sum as may be paid into the state treasury in the manner hereinafter provided.

[**Tax on insurance companies to defray expenses of department.**] For the purpose of maintaining the department of state fire marshal, and paying the expenses incident thereto, every fire insurance company doing business in the state of Ohio, shall pay to the superintendent of insurance, in the month of November, annually, in addition to the taxes now required by law, to be paid by such companies, one-half of one per cent. on the gross premium receipts of such companies on all business done in Ohio the year next preceding, as shown by their annual statements, under oath, to the insurance department. The superintendent of insurance shall cover the money so received into the state treasury as a special fund for the maintenance of said office of state fire marshal, and the expenses incident thereto. Such portion of said special fund remaining unexpended at the end of any fiscal year, as the state fire marshal shall certify is not needed for the maintenance and expenses of his department, shall be transferred to the general revenue fund of the state.

[**Itemized statement of expenses.**] The state fire marshal shall keep on file in his office an itemized statement of all expenses incurred by his department, and shall approve all vouchers issued therefor, before the same are submitted to the auditor of state for payment, which said vouchers shall be allowed and paid in the same manner as other claims against the state. [1904, April 25; 95 v. 474; 94 v. 388.]

Tax provision applies to all fire insurance companies and associations, both foreign and domestic, except such as are incorporated under § 3686 Revised Statutes. Atty. Genl. opinion, Dec. 27, 1900.

Sec. 409—57. [**Marshal not to engage in other business; attendance at office.**] The state fire marshal shall not engage in any other business, and he or one of his deputies shall at all times be in the office of the fire marshal ready for such duties as are required by this act. [95 v. 475; 94 v. 389.]

Sec. 409—58. [**Annual report.**] The fire marshal shall submit annually as early as consistent with full and accurate preparation, and not later than the 15th day of January, a detailed report of his official action to the governor. [95 v. 475; 94 v. 389.]

Sec. 409—59. [**Compensation of various officers for reporting fires to fire marshal.**] There shall be paid to the chiefs of fire departments, and to mayors of incorporated villages, who do not receive compensation for their services as such chiefs and mayors, and to the township clerk of every organized township, who are by this act required to report fires to the state fire marshal, the sum of fifty

cents for each fire so reported to the satisfaction of the state fire marshal, and in addition thereto, mileage at the rate of fifteen cents per mile for each mile traveled to the place of the fire. Said allowance shall be paid by said state fire marshal at the close of each fiscal year, out of any funds appropriated for the use of the office of said state fire marshal. [95 v. 475.]

CHAPTER I.

TITLE II—PART SECOND.

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(3269—4) *Penalty for violation of section three.*

The corporate property is a trust fund for the payment of the corporation debts: Meisse et al. *v.* Loren et al., 4 N. P. 100; 6 O. D. 258.

Sec. 3232. [**By what laws corporations shall be governed.**] Corporations created before the adoption of the present constitution, and which have not, by election or some other act, come to be governed by laws since passed, shall be governed and controlled by the laws then in force, and the valid modifications thereof since or herein enacted; other corporations now existing or hereafter created shall be governed and controlled by the provisions of this title.

Where an amendment to a charter provided a particular manner in which it should be accepted, that mode of acceptance should be followed: Owen *v.* Purdy, 12 O. S. 73; but where the corporation has exercised the powers, or enjoyed the privileges and immunities, secured by the amendment, neither the corporation nor the assenting stockholders can deny the acceptance of the amendment as between themselves, or as against the claims of third persons: *Ib.;* Goodin *v.* Evans, 18 O. S. 150; but a non-assenting stockholder, whose assent is necessary to the acceptance of the amendment, is not concluded by any presumption arising from the acts of the corporation, or other stockholders, and if he has not stood by, and neglected to act when he should have acted, he may deny that he assented, and invoke the aid of the state in quo warranto, or the power of a court in an action in his own name: Owen *v.* Purdy, *supra;* and, in the absence of any provision to the contrary, an amendment may be accepted by parol. Goodin *v.* Evans, *supra.*

A general law, in terms applicable to all corporations, affects corporations created by special acts, as to which there was a reserved power of amendment or repeal: State *v.* Cincinnati G. L. & C. Co., 18 O. S. 262; a general act, in force from March 7, 1842, to March 12, 1845, provided that charters of every corporation created after the passage of that act should be subject to alteration, suspension, and repeal; and many amendments of charters granted before and after that period, and as to which the power of amendment or repeal was not reserved, have been affected by the action of the corporation under § 71 of the act of May 1, 1852, which is now § 3233; and many other amendments of such charters have also been affected by the application of the provisions of 70 *v.* 129, § 5; 72 *v.* 71, § 7, and other like sections, the substance of which is now found in § 3234.

The Association of the Tobacco Trade of Cincinnati, a corporation formed under the act of April 3, 1866 (S. & S. 182), since the repeal of said act is, under § 3232 of the Revised Statutes, required to be governed by the provisions of Title 2 of said statutes: State ex rel. *v.* Casey, 38 O. S. 555.

Sec. 3233. [**What corporations may accept the provisions of this title.**] A corporation created before the adoption of the present constitution, and now actually doing business, may accept any of the provisions of this title, and when a certified copy of such acceptance is filed with the secretary of state, so much of its charter as is inconsistent with the provisions of this title is hereby repealed. [50 v. 274, § 71; S. & C. 309.]

It is not indispensable that a certificate of the company's acceptance be filed with the secretary of state; it is the fact of acceptance which binds the company and works the amendment: Railroad Co. *v.* Cole, 29 O. S. 126.

A general law of the state will affect companies incorporated under special acts, as to which there was a reserve power of amendment or appeal: State ex rel. Attorney-General *v.* Cincinati G. L. & C. Co., 18 O. S. 262.

(3233—1) [**Special charters not accepted or acted on, repealed.**] All special acts of incorporation in force in this state, which have not been accepted, or acted upon, be and the same are hereby repealed. [58 v. 12.]

(3233—2) [**Duty of secretary of state; effect of charter.**] Whenever it shall be made to appear to the satisfaction of the secretary of state that any religious society or corporation heretofore organized or incorporated under the laws of this state has lost its charter or certificate of incorporation, or that the same has been destroyed, it shall be the duty of the secretary of state to issue a new certificate of incorporation of such religious society or corporation theretofore is-

sued, and the time as near as may be ascertained of issuing such lost or destroyed certificate as shall be made to appear to him; and thereupon all deeds, mortgages, or other instruments of writing for the conveyance of land, as well as all acts done by such religious society or corporation by virtue of such certificate or charter theretofore lost, shall be binding and of full force in law and in equity: provided, that nothing in this act shall be so construed as to make valid any act not authorized under the laws of this state which heretofore have been in force. [75 v. 77.]

(3233—3) [**Thirty years' exercise of corporate rights prima facie evidence of incorporation.**] The fact that a religious society for not less than thirty years, claiming to have been duly and legally incorporated as such, and performing during such time duties and exercising rights as such, shall be prima facie evidence of the original issue of such charter or certificate of incorporation as claimed by such society. [75 v. 77.]

Sec. 3234. [**Application of existing laws to corporations created prior to 1851; proviso.**] Corporations created before the adoption of the present constitution, which take any action under or in pursuance of this title, shall thereby and thereafter be deemed to have consented, and shall be held to be a corporation, and to have and exercise all and singular its franchises under the present constitution and the laws passed in pursuance thereof, and not otherwise; provided, that any fire insurance company so created, complying with the requirements of sections three thousand six hundred and fifty-four, and three thousand six hundred and fifty-five, or of any police regulation contained in chapter eleven of this title, or in chapter eight of title three, part first, shall not be deemed to have consented, and shall not be affected by the provisions of this section by reason of such compliance. [89 v. 73; 83 v. 201; Rev. Stat. 1880.]

This section is now constitutional: State ex rel. *v.* Eagle Ins. Co., 50 O. S. 252, 276; affirmed, 153 U. S. 446, 456.

A fire insurance company, incorporated prior to 1851, by taking the benefit of laws enabling it to insure against lightning, thereby accepts the present laws as to corporations: Knox Co. Mut. Ins. Co. *v.* Bowersox, 6 C. C. 275.

A corporation disregarding the charter provisions for electing officers changed the time and their term, held to have become a corporation under the present constitution: State *v.* Lakamp, 4 C. C. 257.

Sec. 3235. [**For what purpose corporations may be formed.**] Corporations may be formed in the manner provided in this chapter for any purpose for which individuals may lawfully associate themselves, except for carrying on professional business; but nothing in this section shall prevent the formation of corporations for the purpose of erecting, owning and conducting sanatoriums for receiving of and caring for patients and for the medical, surgical and hygienic treatment of the diseases of such patients, and for instruction of nurses in the treatment of diseases and in hygiene; provided, that the

articles of incorporation formed for the purpose of buying or selling real estate shall expire by limitation in twenty-five years from the date of being issued by the secretary of state. In case any real estate owned by any such corporation is not sold or disposed of by any such corporation within twenty-four years from the date of their respective articles of incorporation are issued, it shall be forthwith the duty of the board of directors of such corporation to institute action against the corporation and owners of liens upon or against such real estate proposed to be sold, by filing a petition in the court of common pleas in the county where such real estate is situated, praying for a sale of the real estate in the petition described; and should any of such board of directors refuse to direct any officer to institute action as hereinbefore mentioned, and should such action not be instituted within sixty days after the expiration of the twenty-four years hereinbefore mentioned, it shall be the duty of the prosecuting attorney of the county wherein such real estate is situated, upon the expiration of said sixty days, to institute such action. Service of summons upon the defendants, appraisement and sale of such real estate, and distribution of the proceeds of the sale shall be made as provided in actions of foreclosure of mortgages and marshalling liens; provided, however, the court may allow the plaintiff, in case he be the prosecuting attorney, a just and proper attorney fee which shall be taxed with the costs of the action. [95 v. 623; 94 v. 65; 91 v. 126; 90 v. 205; R. S. of 1880.]

A corporation is an artificial being, which exists only in legal contemplation, and, being a mere creature of the law, possesses only those attributes which the law confers, or such as may be implied as necessary to its existence, and it can exercise no powers but such as are given to it by its charter, or such as are necessary to carry into effect the powers expressly conferred: Bonham *v.* Taylor, 10 O. 108; and corporations are strictly limited to the exercise of such powers, and in such manner and by such agents, as are provided in their charters: Bartholomew *v.* Bentley, 1 O. S. 37.

Where property which a corporation, under certain circumstances, is authorized by its charter to acquire, is purchased in a mode or for a purpose not authorized, the title of the corporation to the property can not be defeated by a party who is a stranger to the agreement by which the property was acquired, and who is not injured by the transfer: Ehrman *v.* Insurance Co., 35 O. S. 324. Okey, J. dissented.

This section does not authorize the incorporation of insurance companies, as the organization of such companies is specially provided for in Chapters X and XI, Title 2: State *v.* The Pioneer Live Stock Co., 38 O. S. 347.

Cited in Larwell *v.* Hanover Savings Fund Society, 40 O. S. 282.

The doctrine of *estoppel* applies to a trading corporation the same as to a natural person in all transactions within its corporate authority: Bank *v.* Flour Co., 41 O. S. 552.

A corporation can make no contracts, and do no acts, either within or without the state which creates it, except such as are authorized by its charter: Ewing *v.* Bank, 43 O. S. 31.

The word "purpose" is designedly in the singular number: State ex rel. *v.* Taylor, 55 O. S. 67.

A corporation may have a capital stock without being one for profit: Snyder *v.* Chamber of Commerce, 53 O. S. 1.

A building asociation incorporated under the law of 1868 has no power to purchase land on credit, to be allotted among its members: Vos *v.* Cedar Grove L. & B. A. (Cin. Sup. Court, Gen. Term), 9. W. L. B. 195.

Sec. 3235*a*. [Corporations for profit; stock may be common or preferred.] If the organization is for profit, it must have a capital stock. Such stock may consist of common and preferred, or of com-

mon only, but at no time shall the amount of preferred stock exceed two-thirds of the actual capital paid in in cash or property; and if both common and preferred it may be provided in the articles of incorporation that the holders of the preferred stock shall be entitled to dividends not exceeding eight per cent. per annum, payable quarterly, half yearly, or yearly, out of the surplus profits of the company each year in preference to all other stockholders, and such dividends may be made cumulative.

[**Provisions in reference to preferred stock.**] Every corporation issuing both common and preferred stock may create such designations, preferences, and voting powers, or restriction or qualification thereof, as shall be stated and expressed in the certificate of incorporation, and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in stock certificate thereof. In case of the insolvency of the corporation no holder of preferred stock shall be liable for the debts of the corporation until after the remedy against the common stockholders upon their double liability, as provided by law, shall have been pursued and exhausted, and then only for such amount as remains unpaid; but such liability shall in no event exceed the liability fixed by law for the common stock of such corporation. In case of the insolvency or dissolution of the corporation, the holders of the preferred stock shall be entitled to receive from the assets remaining after paying its debts and liabilities, the full payment of the par value of the stock, before anything is paid to the common stock. [95 v. 623, May 12, 1902.]

Sec. 3236. [**Articles of incorporation: what to contain.**] Any number of persons, not less than five, a majority of whom are citizens of this state, desiring to become incorporated, shall subscribe and acknowledge, before an officer authorized to take acknowledgments of deeds, articles of incorporation, the form of which shall be prescribed by the secretary of state, which must contain:

1. The name of the corporation, which shall begin with the word "The" and end with the word "Company,"unless the organization is not for profit.

2. The place where it is to be located, or where its principal business is to be transacted.

3. The purpose for which it is formed.

4. The amount of its capital stock, if it is to have capital stock, and the number of shares into which the stock is divided.

5. Provided, any association of five or more persons, who are residents of the state of Ohio, and who are associated, not for profit, and as the principal or ruling organization over subordinate organ-

izations, associated, not for profit, and having a definite location or place of business in the state of Ohio, may be incorporated, having its location or principal place of business in the state of Ohio, and without naming, in its articles of incorporation, a permanent place where it is to be located, or where its principal business is to be transacted. But such association must name, in its articles of incorporation, the place where it is to be located, or where its principal business is to be transacted, at the time of its incorporation, with the name and place of residence of its then principal officers. And when such association changes its place where located, or the place where its principal business is transacted, it shall be the duty of its principal officer, under its seal, if it has one, countersigned by the officer acting as secretary of such association, to certify to the secretary of state of Ohio, the place then selected by such association, as its location, or where its principal business is to be transacted, with the name of its principal officers, and their places of residence, which certificate the secretary of state shall record for public use in the records of his office. [1889, April 10: 86 v. 224; 82 v. 134; Rev. Stat. 1880.]

For "an act to change the location of the Razor Blade Shears Manufacturing Company of Blanchester, Ohio" (81 v. 149).

The want of a seal to such instrument is such a defect or omission as may be supplied by the court in proceedings under the act of March 10, 1859 (56 v. 40), the provisions of which are now found in sections 5867 to 5872, inclusive: Warner *v.* Callender, 20 O. S. 190; an acknowledgment of such certificate before a notary, when the law required it to be taken before a justice of the peace, was held, in quo warranto, to be a sufficient ground to oust the defendants of their claim to be a corporation: State *v.* Lee, 21 O. S. 662. Such mistake might be corrected in proceedings under the act of March 10, 1859, *supra*, and the effect of the correction was to make the corporation such *de jure* from its organization, not only against persons dealing directly with it but against all other persons: Spinning *v.* Home Building & Savings Ass'n, 26 O. S. 483. In an action by a building and saving association to recover money which a member had as a loan from it, the member is estopped from setting up the defense of no corporation because the certificate of incorporation was acknowledged before the clerk of the court, and not before a justice of the peace, as the statute required: Lucas *v.* Building & Savings Ass'n, 22 O. S. 339; having organized and acted as a corporation, and entered into the contract on which it was sued as such corporation, the corporation, and members thereof, were estopped to deny their corporate existence: Callender *v.* Railroad Co., 11 O. S. 516.

Section 2 of the act of May 1, 1852 (50 v. 274), which provided that such acknowledgement should be taken before a justice of the peace, was amended by the act of February 14, 1872 (69 v. 14), and the amendment authorized the same to be taken before a notary public; and it further provided that certificates executed and acknowledged under the provisions of original § 2, and under which any company in good faith organized and acted, should be valid; afterward, by the act of March 10, 1873 (70 v. 61), the incorporation of all companies theretofore organized, and which had been in good faith doing business for three years, was declared to be valid, if the company, within six months from the date of the act, filed with the secretary of state an amended certificate of incorporation executed according to law; and by the supplemental act of March 18, 1874 (71 v. 26), the provisions of the act of March 10, 1873, were re-enacted, except that the company must have been engaged in business for four years, and the amended certificate was required to be made by the persons composing the board of directors, or any five, or a majority of them.

Where a paper and flour company organize under statute, and state where their principal office is, but not where place of business is, and intend secretly to carry on business in another state, it is a legal corporation until dissolved: State ex rel. Attorney-General *v.* Taylor, 25 O. S. 279.

Corporation chartered by two states has its domicile in both: Bridge Co. *v.* Mayer, 31 O. S. 317.

In organizing a building association under the act of February 21, 1867 (64 v. 18), the certificate of incorporation was by mistake acknowledged before a notary public, instead of being acknowledged before a justice of the peace, as then required. In proceedings instituted under the act of March 10, 1859 (S. & C. 1172), the mistake was subsequently corrected: Held, that the effect of the correction was to make the association a corporation *de jure* from the date of its organization, not only as against persons dealing directly with the association, but as against all others: Spinning *v.* Building Ass'n, 26 O. S. 483.

Cited in State *v.* Standard Life Ass'n, 38 O. S. 289.

The capital stock of a corporation consists of the money and property subscribed and paid in for the purpose of carrying on its business operations. It constitutes the corporate fund belonging to the corporate body: Jones *v.* Davis, 35 O. S. 476, 477.

The ownership of a share of stock involves the right to participate in the dividends declared from the profits of the business, and, upon the dissolution of the corporation, to a proportionate share of the fund remaining after payment of the corporate debts: *Ib.* 477.

The principal office of a corporation, which constitutes its residence or domicile, is not to be determined by the amount of business transacted here or there, but by the place designated in the certificate: Pelton *v.* Transportation Co., 37 O. S. 451-455.

Where an attempt is made, in good faith, to organize a private corporation by colorable proceedings, and where these steps are followed by uninterrupted user for a number of years, it is a corporation *de facto*, and its corporate capacity can not be questioned in a private suit to which it is a party: Society Perun *v.* Cleveland, 43 O. S. 481.

Parties dealing with it in good faith will not be divested or defeated by a subsequent judgment in quo warranto proceedings excluding it from the use of its corporate franchises: *Ib.*

Sec. 3237. [**What articles must set forth in certain case.**] When the organization is for a purpose which includes the construction of an improvement which is not to be located at a single place, the articles of incorporation must also set forth—

1. The kind of improvement intended to be constructed.

2. The termini of the improvement, and the counties in or through which it or its branches shall pass.

In such certificate of parties organizing a railroad company, a description of one terminus of the proposed road as "in or near" a town named in the certificate, and on the line of a specified railroad which terminates at that town, is sufficiently certain: Warner *v.* Callender, 20 O. S. 190.

A description of a railroad in a certificate of incorporation, in the words "to commence at some point, to be hereafter designated, in the township of Hudson, in the county of Summit, passing through the county of Portage or Cuyahoga, also through the counties of Geauga and Lake, to terminate at some point, to be designated, in the township of Painesville, in the county of Lake," the same having been recorded, and a copy thereof given by the secretary of state, and the company having organized and acted under it, did not render the certificate void for uncertainty: Callender *v.* Railroad Co., 11 O. S. 516.

A certificate of incorporation of a railroad company which leaves to the company a discretion to select through which of the several counties named the road may be constructed, and also providing simply that the termini of the road shall be a point not designated on the Ohio and Pennsylvania state line, in the county of Trumbull, and a point not designated on the Ohio river, in either the county of Brown or the county of Adams, is void because not in conformity with the statute: Railroad Co. *v.* Sullivant, 5 O. S. 276.

Sec. 3238. [**Articles must be acknowledged, certified and filed with secretary of state.**] The official character of the officer before whom the acknowledgment of articles of incorporation is made shall be certified by the clerk of the court of common pleas of the county in which the acknowledgment is taken, and the articles shall be filed in the office of the secretary of state, who shall record the same, and a copy duly certified by him shall be prima facie evidence of the existence of such corporation, and all certificates thereafter filed in the office of the secretary of state relating to the corporation shall be recorded;

[**As to same or similar name.**] but the secretary of state shall not in any case file or record any articles of incorporation in which the name of the corporation is such as is likely to mislead the public as to the character or purpose of the business authorized by its charter, or is the same as one already adopted or appropriated by an existing corporation of this state or so similar to the name of such existing corporation as to be likely to mislead the public, unless the written consent of such prior existing corporation, signed by its pres-

ident and secretary, be at the same time filed with such articles of incorporation. [95 v. 76; 92 v. 320; R. S. of 1880.]

Filing the articles does not make a corporation. No company exists until the requisite stock is subscribed and directors chosen: State ex rel. *v.* Ins. Co., 49 O. S. 440.

Sec. 3238*a*. [How made; authorized amendments; proviso; record; notice; waiver; fee.] Any corporation incorporated under the general corporation laws of the state, may, at any meeting of its members or stockholders, of which, and of the business to come before said meeting thirty days' notice has been given by a majority of the directors or trustees of said corporation in a newspaper published and of general circulation in the county where the principal place of business of said corporation is located, by a vote of the owners of at least three-fifths of its capital stock then subscribed, in the case of corporations having a capital stock, or by a vote of at least three-fifths of its members of corporations having no capital stock, amend its articles of incorporation so as to change its corporate name, or the place where it is to be located, or where its principal business is to be transacted; or so as to modify, enlarge or diminish the objects or purposes for which it is formed; or so as to add thereto anything omitted from, or which might lawfully have been provided for in such articles originally; provided, however, that nothing in this supplementary section contained shall authorize a corporation, by amendment, to increase or diminish the amount of its capital stock; nor shall any corporation, by amendment, change substantially the original purposes of its organization. When adopted, a copy of such amendment, with a certificate thereto affixed, signed by the president and secretary of the corporation, and sealed with the corporate seal, if any there be, stating the fact and date of the adoption of such amendment, and that such copy is a true copy of the original, shall be recorded in the office of the secretary of state, who shall note on the margin of the record of the original articles of incorporation of said corporation, and on the margin of the index thereto, the volume and page where such amendment is recorded; and no such amendment shall take effect until filed for record with the secretary of state as herein provided, and until the secretary of the corporation shall have given notice for three consecutive weeks, in some newspaper of general circulation in the county where the principal office of the corporation is situated, of such amendment; provided, however, that any or all of the notices required by this section may be waived whenever the holders of all of the capital stock, of a corporation having a capital stock, or all the members of a corporation having no capital stock, consent thereto in writing. But no corporation shall change its name to one already appropriated, or to one likely to mislead the public; nor shall any corporation, by amendment, provide

for a purpose which is unlawful. For recording such amendments and for furnishing a certified copy, the secretary of state shall receive a fee of twenty cents a hundred words, to be in no case less than five dollars. [1886, May 18: 83 v. 193.]

This right to amend does not extend to a substantial change of the original purpose of the organization: State ex rel. *v.* Taylor, 55 O. S. 67.

The power given to a mining company to construct a railway from its mines, § 3866, and to be governed as to the railway by the railway laws, among which § 3311 allows a railway company to change its principal office, does not thereby enable the mining company to amend its charter by a mere vote of its directors so as to change its principal place of business to another county; § 3311 applies only to an incident of the business and not to the corporation itself. The situs of the company can only be changed under § 3238*a*, hence an action against it is properly brought in the original county, and summons can be sent to the county where its actual office is: Coal Co. *v.* Ry. Co., 6 O. D. 178.

See note to State *v.* Coal Co., 4 N. P. 115, under § 3866.

A corporation organized to furnish gas for lighting purposes may amend its charter so as to supply both gas and electricity for that purpose: Picard *v.* Hughey, 58 O. S. 557.

Sec. 3239. [Corporation thereby created, and its general powers.] Upon such filing of the articles of incorporation, the persons who subscribed the same, their associates, successors, and assigns, by the name and style provided therein, shall thereafter be deemed a body corporate, with succession, and power to sue and be sued, contract and be contracted with, acquire and convey at pleasure all such real or personal estate as may be necessary and convenient to carry into effect the objects of the incorporation, to make and use a common seal, the same to alter at pleasure, and to do all needful acts to carry into effect the objects for which it was created. [50 v. 274, § 3; S. & C. 273.]

A contract made with a company before it is incorporated, is void for the want of mutuality: Turnpike Co. *v.* Coy, 13 O. S. 84.

An agent of a company, for a consideration paid, made a contract in the name of the company containing several stipulations, some of which he had authority to make, and as to others he was without authority: Held, that the company could not enforce part of the stipulations and avoid the others, because of the absence of authority in its agent to make them, but that it must execute the whole contract, or refund the consideration paid: Weeden *v.* Railroad Co., 14 O. 564.

A corporation can not be sued for assault and battery, nor joined with an individual in such an action: Orr *v.* U. S. Bank, 1 O. 36.

A deed was executed by S. in his own name as president, and under his own seal: Held, not to be the deed of corporation: Hatch *v.* Barr, 1 O. 390.

Where contract has been performed by either, the other will be estopped to insist that contract was *ultra vires*: Hays *v.* Galion G. L. & C. Co., 28 O. S. 330.

See the case of Ehrman *v.* Insurance Co., 35 O. S. 324, under § 3235.

An executory agreement between a manufacturing corporation of this state and one of its stockholders, for the purchase of the stock of such corporation by the former from the latter, can not be enforced, either by action for specific performance or for damages: Coppin v. Greenlees & Ransom Co., 38 O. S. 275.

Filing the articles do not make a corporation but are simply authority to do so. There is no corporation until the requisite stock is taken and paid and the directors chosen: State *v.* Ins. Co., 49 O. S. 440.

A corporation comes into existence as soon as articles of incorporation are filed: State ex rel. *v.* Robinson (Ham. Dist. Court), 12 W. L. B. 269.

A railroad company may expend money to take up or regain its own property or securities, which have been fraudulently taken from its possession, when there is reason to apprehend that otherwise great loss may result to it: Railroad Co. *v.* Duckworth, 2 C. C. 518. Cited Ashley *v.* Ryan, 153 U. S. 436, 440; 49 O. S. 504.

A chattel mortgage executed by the president and secretary of a corporation who are members of the board of directors, executed to secure a corporation debt, without the knowledge of the directors, is valid as to the mortgagee who had no knowledge of that fact: Bosche *v.* Toledo Horse Display Co., 14 C. C. 294; 7 O. D. 374.

See note to § 3256.

A corporation may give a chattel mortgage to secure an antecedent loan created for carrying on its business, and it is not void against creditors, there being no intention at the time to cease business; although afterwards threatened with attachment, it asks for a receiver: Bosche *v.* Toledo Horse Display Co., 14 C. C. 292; 7 O. D. 374.

A corporation can not give a secret inchoate preference, allowing other creditors to give it credit, and by a signal previously given, allow this inchoate secret preference to be made absolute to the exclusion of the other creditors: Benedict et al. *v.* Market National Bank et al., 4 N. P. 231; 6 O. D. 320.

Sec. 3240. [First election of trustees; term and number.] A majority of the subscribers of the articles of incorporation formed for a purpose other than profit, may elect not less than five trustees of the corporation who shall hold their office till the next annual meeting, or until their successors are elected and qualified; but in the case of religious corporations and institutions incorporated for the purpose of promoting education, science or art the regulations of such corporations may provide for the length of time said trustees shall hold their offices, the term thereof not to exceed in number of years the number of such trustees; provided, that lodges, societies, or bodies of any secret or benevolent order incorporated under the laws of this state, may elect such number of trustees, not less than three, as may be provided in the laws or regulations governing such lodge, society, or body, and the election of such trustees may be held at the time specified in such laws or regulations. Provided further, that the members of any corporation heretofore organized, or that may hereafter be organized, for the purpose of owning and conducting a hospital for sick and disabled persons, may provide for the election of not less than five nor more than fifteen trustees who shall serve during life, and also that in case of vacancy in the board of trustees of such association by death, resignation or otherwise, the remaining members of such board may fill such vacancy. In case of a corporation heretofore organized for such purpose such regulations providing that the trustees shall hold office during life, may be adopted at any annual meeting, or at any special meeting of the association duly and regularly called; but notice of such proposed change in the regulations shall be published for three successive weeks in some newspaper published and of general circulation at the place where such hospital is located. [R. S. 1880; 78 v. 200; 80 v. 79; 85 v. 166; 95 v. 547.]

Mutual protection associations, organized under and for the purposes named in § 3630, are corporations other than for profit, and are subject to all the general provisions of this chapter which apply to corporations formed for purposes other than profit: State *v.* The Standard Life Ass'n, 38 O. S. 281.

Sec. 3241. [Membership in corporation, not for profit; religious, secret, and benevolent societies.] The subscribers of such articles of incorporation shall cause the same to be copied into a book which they shall provide, and which shall be the property of the corporation; and a person having the qualifications prescribed by the corporation, may become a member by subscribing his name to such copy; provided, that when the incorporators of a corporation, now or hereafter formed, are, or shall be members of a church, religious, secret or benevolent society, and have signed or shall sign articles for the purpose of enabling such church, religious, secret or benevolent society to become incorporated, any person who is or shall become

a member of such church, religious, secret or benevolent society, in good standing, shall by virtue of such membership be a member of such corporation, and entitled to vote at all meetings of such corporation, for the election of officers or other purpose, anything in the preceding section to the contrary notwithstanding. [1887, March 16: 84 v. 85; 83 v. 168; Rev. Stat. 1880.]

No member of a corporation can be disfranchised, no officer removed, without the agency of a tribunal competent to investigate the cause and pronounce the sentence of the loss of right. Where the charter prescribed the terms under which the power of a motion is to be exercised, they must be pursued; and where the organic law is silent, the corporation itself possesses the inherent power to ascertain and declare the forfeiture, either of franchise or office; but in every case the party to be affected should be duly summoned: State *v.* Bryce, 7 O. (2 pt.) 82.

Inherent power exists in corporations not for profit to expel members for sufficient cause: Cheney *v.* Ketcham et al., 5 N. P. 139.

The proper remedy for a proper expulsion is injunction, not mandamus: *Id.*

Sec. 3242. [Corporations for profit to give notice of opening books for subscription; notice may be waived.] The persons named in the articles of incorporation of a corporation for profit, or a majority of them, shall order books to be opened for subscription to the capital stock of the corporation at such time or times and at such place or places as they may deem expedient, and of the time and place of opening which books at least thirty days' notice shall be given by publication in a newspaper published or generally circulated in the county or counties where books of subscription are to be opened; provided, that such notice may be waived in writing by all the incorporators, and such waiver shall be entered or copied in the records of said corporation. [88 v. 280; 80 v. 42; Rev. Stat. 1880; 50 v. 274, § 9; S. & C. 276.]

It is not necessary to the validity of a stock subscription that it be made in a book opened by the company for the purpose: Railroad Co. *v.* Smith, 15 O. S. 328.

The omission to pay ten per cent. at the time of subscription, does not release subscribers from liability to pay their subscriptions: Henry *v.* Railroad Co., 17 O. 187.

It is not even necessary that the subscription provide for the payment of that amount in hand: Chamberlain *v.* Railroad Co., 15 O. S. 225.

An agreement by which a right was attempted to be secured by a stockholder to pay his stock subscription in anything else than money, will be treated as a fraud on the other stockholders, and the payment of the subscription in money enforced: Henry v. Railroad Co., *supra;* Noble *v.* Callender, 20 O. S. 199.

A subscriber may insert in his subscription any conditions precedent he may choose, and until they are performed, his relation as stockholder does not arise: Chamberlain *v.* Railroad Co., *supra.*

Conditional subscriptions become absolute on the performance of the conditions: Railroad Co. *v.* Smith, 15 O. S. 328; and where such a subscription was delivered to the company before the election of directors, and after the election of directors the condition was performed, the subscription took effect at the time of performance: *Ib.*

A condition that the road should "pass through" a given locality, is performed by the location of the road on the route designated: Railroad Co. *v.* Smith, *supra*: Railroad Co. *v.* Stout, 26 O. S. 241.

A condition in the words "provided the road is built" in a certain locality, is performed when the road is permanently located at that place, although, from failure of funds, it is never completed: Warner *v.* Callendar, 20 O. S. 190.

A condition in the words "provided the road is located" on a given route, "and that a freight-house or depot be built" at a point named, is performed on the permanent location of the road in accordance with the condition, and the provision in relation to the erection of building is a stipulation merely, and not a condition precedent: Chamberlain *v.* Railroad Co., *supra.*

A subscription upon the condition that the same should be expended upon a certain line of road to be thereafter located by the company, cannot be enforced unless the company shows that the road has been constructed on that line, or offers, and is ready, to expend the money according to the condition: Trott *v.* Sarchett, 10 O. S. 241.

When the maker of a conditional subscription pays a part of it, and for the balance gives his note, and accepts from the company a receipt stipulating that when the note is paid the amount should be applied on his stock, he thereby waives the conditions precedent: Chamberlain *v.* Railroad Co., *supra.*

It is no defense to an action upon a stock subscription that the defendant, with others, was guilty of a violation of law in assuming to do business under the act of incorporation under which the organization of the company was effected, or intended to be effected: Voorhees *v.* Receivers, 19 O. 463; nor will a member of a mutual fire insurance company, when sued upon an assessment on his deposit note, be permitted to set up, by way of defense, that he and his associate corporators have neglected to comply with the provisions of their charter: Insurance Co. *v.* Horner, 17 O. 407; but a subscriber to stock may defend against an action on his stock subscription by showing that there never was any such corporation: Navigation Co. *v.* Eagle, 29 O. S. 238; but whether a stockholder, who for years has dealt with the corporation, can, when sued for unpaid subscriptions, set up technical defects in the certificate of incorporation, *quaere*: Warner *v.* Callender, *supra*.

A note given for stock subscribed, without any intention to pay it, and merely for the purpose of pretending to the public that the stock was greater than it really was, or for the purpose of preventing the predominance of certain stockholders, is valid, and its payment will be enforced: Bates *v.* Lewis, 3 O. S. 459; and an assignment of stock to a fictitious person is a nullity: Turnpike Co. *v.* Ward, 13 O. 120.

An immaterial change in the route of a turnpike company does not release a subscriber to the stock of the company from his obligation to pay his subscription: Turnpike Co. *v.* Brush, 10 O. 111.

Where, after a subscription to stock in a corporation, the powers of the corporation were extended, and it was authorized to engage in business not contemplated by the original charter, it was held that the subscription could not be enforced: Railroad Co. *v.* Elliot, 10 O. S. 57.

Where a married woman makes a subscription to the capital stock of a railroad company, by which she agrees to take and pay for a certain number of shares of the stock, but makes default in payment, an action is brought to charge her separate property with the amount of such subscription: Held, that in the absence of any proof that either party dealt on the credit of her separate property, equity will not imply or enforce a charge against the same: Rice *v.* Railroad Co., 32 O. S. 380.

Subscribers to the capital stock of a corporation can not release themselves from payment when such subscriptions are necessary for the payment of corporate debts: Gaff *v.* Flesher, 33 O. S. 107.

To entitle a person to become a member of a corporation which is being organized under "an act to regulate insurance companies" (S. & S. 205), his contract to take shares therein must be in writing, and be mutually binding on both parties: Fanning *v.* Insurance Co., 37 O. S. 339. See § 3635, Revised Statutes.

Cited Toledo *v.* Consolidated St. Ry. *v.* Toledo Electric St. Ry., 6 C. C. 362, 392.

Sec. 3243. [**When subscriptions to stock are payable.**] An installment of ten per cent. on each share of stock shall be payable at the time of making the subscription, and the residue thereof shall be paid in such installments, and at such times and places, and to such persons, as may be required by the directors of the corporation. [50 v. 274, § 6; S. & C. 276.]

Before an action can be maintained by a railroad company to recover unpaid subscriptions to its stock, its board of directors must have required the same to be paid in certain installments, and at a certain time and place: Railroad Co. *v.* Hall, 26 O. S. 310.

Under the general corporation act of May 1, 1852 (50 v. 274), assessments on subscriptions to the capital stock of railroad companies might be made and enforced, although the whole amount of such stock mentioned in the certificate of incorporation may not have been subscribed: Jewett *v.* Railway Co., 34 O. S. 601.

A notice to pay installments to the treasurer of the company, implies that the payment is to be made at his office, and is sufficient: Turnpike Co. *v.* Ward, 13 O. 120.

Where the law required "at least sixty days' notice," a single notice, published at least sixty days before the day of payment, is all that is required: *Ib.*

Sec. 3244. [**Certificate of subscription to stock; notice of election of directors.**] As soon as ten per cent. of the capital stock is subscribed, the subscribers of the articles of incorporation, or a majority of them, shall so certify, in writing, to the secretary of state, and thereupon shall give notice to the stockholders, as provided in section *three thousand two hundred and forty-two*, to meet at such time and place as they may designate, for the purpose of choosing not less than five nor more than fifteen directors, except that savings and loan associations, mutual telephone companies, safe deposit companies and trust companies may choose not more than thirty directors, who shall continue in office until the time fixed for the annual election, and until their successors are chosen and qualified; provided, that in case all subscribers are present in person, or by proxy, such notice may be

waived in writing, and the incorporators of the company shall be liable to any person affected thereby, to the amount of any deficiency in the actual payment of said ten per cent., at the time of so certifying. [1904, April 18; 91 v. 304; 77 v. 266; Rev. Stat. 1880; 50 v. 274, § 9: (S. & C. 276).]

See § 148*a*, subdivision 15.

It is not necessary that this notice be given by the persons named in the certificate of incorporation, and the provision in regard to notice is directory merely. If, after the necessary amount of stock has been subscribed, the stockholders meet and elect directors, the acts of the directors can not be questioned collaterally on account of irregularity in their election: Chamberlain *v.* Railroad Co., 15 O. S. 225.

Toledo Consol. St. Ry. *v.* Toledo Elec. St. Ry., 6 C. C. 362, 392.

When in a petition it is averred that directors of a railroad company had been duly elected by the stockholders, in pursuance of notice, it is to be presumed that the requisite amount of stock had been subscribed to authorize such election, and also to authorize the location of the road, and the making of assessments by the directors so elected: Railroad *v.* Smith, 15 O. S. 328.

Five directors is the minimum: Gates *v.* Tippecanoe Stone Co., 9 C. C. 99, 103; 2 O. D. 37; aff'd 57 O. S. 60.

Sec. 3245. [Conduct of election; stockholders may cumulate their votes.] At the time and place appointed, directors shall be chosen, by ballot, by the stockholders who attend for that purpose, either in person or by lawful proxies; at such election and at all other elections of directors, every stockholder shall have the right to vote in person or by proxy the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors shall not be elected in any other manner. A majority of the number of shares shall be necessary for a choice, but no person shall vote on any share on which any installment is due and unpaid.

[Incorporators inspectors of election.] At such first election the subscribers of the articles of incorporation, or any of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and shall appoint the time and place for holding their first meeting. [93 v. 230; 50 v. 274, § 9; S. & C. 276.]

This section does not confer upon stockholders the right of cumulative voting: State ex rel. *v.* Stockley, 45 O. S. 304.

Stock need not be fully paid up necessarily to entitle owner to vote: State ex rel. Henderson *v.* Hogan (Lorain Dist. Court), 1 W. L. B. 227.

This section does not authorize stockholders of a private corporation to cumulate their votes in the election of directors or officers of the corporation: State ex rel. Dent *v.* Halloway, 1 C. C. 157.

Above case followed in State ex rel. Wentzell *v.* Fosdick, 1 C. C. 265.

Sec. 3245*a* (1). [Corporations may limit votes of stockholders.] A corporation may provide in its articles of incorporation that each stockholder, irrespective of the amount of stock he may own, shall be entitled to one vote, and no more, at any election of directors, or upon any subject submitted at a stockholders' meeting, and when such provision is made it shall be governed thereby. [1884, March 19: 81 v. 54, 55.]

There are two sections bearing the number 3245*a*, each reading differently, and both in force.

Sec. 3245*b* (1). [Provisions to which such corporations are subject.] Every corporation where articles of incorporation contain the limitation mentioned in section *thirty-two hundred and forty-five* (*a*), shall be subjected to the following provisions:

1. No person shall hold or own stock in excess of one thousand dollars face value.

2. The directors shall annually within thirty days after the thirty-first day of December, make and file with the recorder of the county in which the corporation is doing business, a statement of its financial condition upon the said thirty-first day of December, plainly setting forth its assets and liabilities in detail, the amount of its paid up capital stock, the names of its stockholders, and the number of shares owned by each, and said statement shall be signed and sworn to by a majority of the directors, including the treasurer, before any officer authorized to administer oaths in this state. If the board of directors fail to make the annual statements required by this section, or if they make a false statement, they shall be personally liable for all claims and demands against such corporation.

3. By-laws for the government of the corporation, and for distribution of its net earnings among its workmen, patrons and shareholders, not inconsistent with the constitution and laws of the state may be made by the stockholders. [1884, March 19: 81 v. 54, 55.]

There are two sections bearing the number 3245*b*, each reading differently, and both in force.

Sec. 3245*a* (2). [Application for appointment of inspectors of election; notice.] Within fifteen days next before any meeting held for the election of directors or trustees, or for the determination of any question by the stockholders of any corporation, or by the subscribers to its stock, or by its creditors and stockholders for its reorganization, any person or persons entitled to vote at said meeting and owning at least a one-tenth interest in its stock may apply to the court of common pleas of the county wherein said meeting is to be held, or if the court be not in session, to a judge thereof, or in case of the absence or disability of such judge then to the probate court, for the appointment of inspectors for such meeting; but no such application shall be acted upon until notice thereof has been served upon the corporation at its general office, and the court or judge may require such additional notice by newspaper publication, or otherwise, as may be deemed proper. [1887, March 18: 84 v. 115.]

See note to preceding § 3245*a*.

Sec. 3245*b* (2). [Appointment of inspectors; vacancies.] Upon the hearing of such application the court or judge shall appoint three competent disinterested persons inspectors for such meeting, if such appointment be considered proper and right, and for good cause may thereafter vacate such appointment as to one or more of said persons

and appoint another or others instead. In case of the failure of any inspector to attend said meeting, or to act thereat, the stockholders may fill the vacancy so caused. [1887, March 18: 84 v. 115, 116.]

See note to preceding § 3245*b*.

Sec. 3245*c*. [List of stockholders to be delivered to inspectors; stock ownership, how ascertained.] Before every such meeting it shall be the duty of the officer or the agent of the corporation having charge of the transfer of its stock, to make out, under oath, a list of its stockholders, showing the number and classes of share held by each, as shown by its books, on the date fixed for closing the stock transfers before its meetings; and if no time be fixed therefor, then on the tenth day prior to the date of such meeting. Such list shall be delivered to the inspectors of the meeting, and shall be *prima facie* evidence of the ownership of its stock; but in case of its absence the inspectors shall ascertain the ownership of stock by the corporation books, stock certificates or other satisfactory proof. [1887, March 18: 84 v. 115, 116.]

Sec. 3245*d*. [Conduct of election by inspectors; certificate of result.] The inspectors so appointed, or if none be appointed, then those selected by the meeting, shall receive and count the votes cast at such meeting, or at any adjournment thereof, either upon an election, or for the decision of any question to be decided by vote, and determine the result, and their certificate of the result shall be *prima facie* evidence therefor. [1887, March 18: 84 v. 115, 116.]

Sec. 3245*e*. [Compensation of inspectors.] The court or judge making the appointment of inspectors may fix their compensation, and may require the applicants for their appointment to secure its payment; but the corporation shall be liable therefor if the meeting by vote so determine. [1887, March 18: 84 v. 115, 116.]

Sec. 3246. [Annual and other elections for trustees and directors.] Unless the regulations of the corporation otherwise provide, an annual election for trustees or directors shall be held on the first Monday in January of each year; if trustees or directors are, for any cause, not elected at the annual meeting, or other meeting called for that purpose, they may be chosen at a members' or stockholders' meeting, at which all the members or stockholders are present in person or by proxies, or at a meeting called by the trustees or directors, or any two members or stockholders, notice of which has been given in writing, to each stockholder, or by publication in some newspaper printed in the county where the corporation is situate, or has its principal office, for ten days; and trustees and directors shall continue in office until their successors are elected and qualified. Except that any corporation, the principal object of which is the owning and operating of a club-house for the use of its stockholders, the

club-house of which is not kept open and operated for the use of its stockholders during the winter season, shall hold its annual election of directors on the third Monday in July of each year, and such election shall be held at the club-house owned and operated by such corporation. [94 v. 375; R. S. of 1880.]

A charter provided that the directors should continue in office until their successors were elected, and that they might fill vacancies in the board by appointment: Held, that a board elected in 1822, and performing no corporate act till 1838, could not then fill vacancies in the board, and that so long a suspension of the performance of any official duty must be regarded as an abandonment or resignation of the office: Bartholomew *v.* Bentley, 1 O. S. 37.

Where the stockholders' meeting is stated and general, notice of the time and place of holding it, or of the business to be transacted, is, in the absence of provision or regulation to the contrary, in no case required: State *v.* Bonnell, 35 O. S. 10.

An adjourned meeting is simply a continuation of the regular meeting, and notice to the stockholders of the holding of such adjourned meeting is not necessary; and any business commenced at the regular meeting may be completed at an adjourned meeting: *Ib.*; Wiswell *v.* First Cong. Church, 14 O. S. 31.

When the corporation was restrained from holding an election for directors on the day named in the charter, and a small number of the stockholders met, organized, and adjourned till the next day, at which time an election was held by a minority of the stockholders, without notice to others who were in the vicinity for the purposes of the meeting, and might have been readily notified: Held, that such election was unfair, and must be held to be invalid, whether the restraining order did or did not bind the stockholders; and the directors chosen at such adjourned meeting were ousted, and those elected at the preceding annual election were restored to office, to continue therein till their successors were duly elected and qualified: *Ib.*

The right of the stockholders of a railway corporation to elect directors is not affected by the sale of the property of the corporation by a receiver, under an order of court: State ex rel. *v.* Merchant et al., 37 O. S. 251.

At a meeting of the stockholders, called for the election of directors, under § 3246, Revised Statutes, the right to choose the inspectors or judges of election is vested in the stockholders; and the directors, against the will of the stockholders present, can not appoint such inspectors: *Ib.*

The elective body consists of the "members" of a corporation not for profit, and the "stockholders" of a corporation for profit: State *v.* Standard Life Ass'n, 38 O. S. 289.

It is not a criminal offense to vote more than once at an election by a private corporation: Lane *v.* State, 39 O. S. 314.

Cited as not imperative as to time of election: State *v.* Lakamp, 4 C. C. 257, 260.

Sec. 3247. [**Oath and duties of trustees and directors.**] Each trustee and director shall, before entering upon his duties, take an oath faithfully to discharge the same; the trustees or directors chosen at any election shall, as soon thereafter as may be convenient, choose one of their number to be president, and, unless the regulations otherwise provide for the election of such officers, shall appoint a secretary and treasurer of the corporation; and a majority of the trustees or directors shall form a board.

Where a director of a corporation is elected secretary, although the by-laws do not provide a salary for the secretary, he is entitled to reasonable compensation, and where it was the intention that he should be recompensed: Pierce, Receiver, *v.* Andrews, 13 C. C. 505; 7 O. D. 105.

Where a note read thus: "One year after date we, or either of us, as directors of the Hamilton, Middletown and Germantown Turnpike Road, promise to pay to K, or order, five hundred dollars, for value received, with eight per cent. interest until paid," and is dated and signed by the makers without any further designation of official capacity, they are liable as individuals: Titus *v.* Kyle, 10 O. S. 444.

The property of depositors and stockholders in a savings bank is a trust fund, and the directors are liable for its wasting by negligence and mismanagement: Meisse et al. *v.* Loren et al., 4 N. P. 100; 6 O. D. 258.

Where a trustee, acting in good faith, without negligence, and in the usual course of business, deposits trust funds in a reputable banking house to his credit as such trustee, and not mingled with his own funds, he is not liable if they are lost by a failure of the bank: Beneficial Ass'n *v.* Ferson, 3 C. C. 84.

Sec. 3248. [**Powers of the board of trustees and directors.**] The corporate powers, business, and property of corporations formed under this title must be exercised, conducted, and controlled by the board of directors, or, where there is no capital stock, by the board of trustees; a majority of the directors must be citizens of the state; all directors

and all the executive officers must be holders of stock in an amount to be fixed by the by-laws, and trustees of corporations must be members thereof; and whenever the office of director or trustee becomes vacant, the board of directors or trustees may fill the same for the unexpired term by appointment, unless the by-laws otherwise provide; and no person shall be appointed or act as a receiver of any railroad or other corporation within this state unless he be a resident citizen of this state.

Corporations are trustees for the individuals of which they are composed, and those who act for the corporation are trustees for it, and can not apply the corporate property to any other purpose than for the general interests of the corporation and its creditors: Taylor *v.* Exporting Co., 5 O. 162.

The creditors and stockholders may pursue the property of the corporation which has been fraudulently or wrongfully disposed of by the directors, into the hands of all purchasers with notice, and assert their lien upon it, or their claims for its value: Goodin *v.* Canal Co., 18 O. S. 169.

The officers, agents, and assenting stockholders of a corporation, who, in the exercise of powers not granted to the corporation, occasion injury to others, are liable in damages therefor: Medill *v.* Collier, 16 O. S. 599; Kearny *v.* Buttles, 1 O. S. 362; Lawler *v.* Walker, 18 O. 151.

Mere irregularities in organizing a corporation will not deprive the officers and stockholders of the protection of the charter, but such organization, to protect them, must be substantially in accordance with the charter: Bartholomew *v.* Bentley, 1 O. S. 37.

Where the charter provided that stockholders only should be elected directors, persons having no interest in the stock, but fraudulently and collusively receiving the transfer of a share to qualify them, are not eligible, and the stockholders combining in such fraud have no power to confer upon them authority to do corporate acts; and such fraud upon the charter, and combination to defraud the public, will prevent those participating in it from claiming any protection under its provisions, to escape private responsibility: *Ib.*

When entire business is *ultra vires*, individuals can not interpose the corporate liability to protect themselves: Medill *v.* Collier, 16 O. S. 599; Bank of the United States *v.* White, W. 574.

When board of directors act with less than a quorum, the act is voidable, not void, and the right to avoid it may be waived: Rolling Stock Co. *v.* Railroad Co., 34 O. S. 450.

A court of equity will not, on the application of a stockholder, interfere with its management and control of the corporate business while acting within the scope of its authority, unless they are guilty of a breach of trust to the injury of such stockholder: Sims *v.* Street Railroad Co., 37 O. S. 556.

This principle is applicable to the action of the board of directors in receiving subscriptions for that portion of the authorized capital not taken before the corporation was organized, where it will promote the objects of the corporation: *Ib.*

A corporation can not be punished for the illegal acts of its minority directors: Goebel *v.* Herancourt Brewing Co., 2 O. D. 377.

Cited in Railway Co. *v.* McCoy, 42 O. S. 253; State *v.* Man. Mut. F. Ass'n, 50 O. S. 145, 150.

The corporate powers must be exercised by the board, means the whole board and not by a majority, which has excluded a minority from acting: State *v.* O. & M. Ry., 6 C. C. 412, 413.

A stockholder holds subject to the right of the majority to act through the board of directors: Straman *v.* N. Balt. Water Wks. Co., 8 C. C. 89, 100; 1 O. D. 346.

A director ceasing to own stock cannot act: Campbell *v.* Bellman, 11 C. C. 360; 5 O. D. 389.

A corporation under the laws of Ohio, which removes from this state, and whose directors remove from the state, and secures authority to do business in another state as an Ohio corporation, may execute in that state a mortgage, which when properly recorded, will be a lien upon property in Ohio: Lattimer *v.* Mosaic Glass Co. et al., 13 C. C. 168; 7 O. D. 430.

A corporation does not cease to exist except in the manner provided by statute, §§ 6761 to 6793: *Id.*

A party may serve as a director when he owns stock and is a party to an executory contract to sell his stock, provided the stock is still his: Kuhn et al. *v.* Woolson Spice Co. et al., 13 C. C. 556; 7 O. D. 289.

A court of equity will not interfere on behalf of a competitor in business to prevent another firm cutting prices below cost, even where the competitor owns stock in such competing company. The question of running a plant is one for the directors, and their discretion will not be interfered with unless there is an abuse of it: Kuhn et al. *v.* Woolson Spice Co. et al., 13 C. C. 547; 7 O. D. 289.

When the officers and directors acted in good faith, and when the stockholders had knowledge of the acts complained of, they will not be personally liable for damages for losses resulting therefrom: Bond *v.* Poe, 12 C. C. 281.

Sec. 3249. [Corporation may adopt regulations.] Every corporation may adopt a code of regulations for its government, not inconsistent with the constitution and laws of the state.

Cited in State *v.* Standard Life Ass'n., 38 O. S. 289.
Cited State *v.* Hutchinson, 56 O. S. 86.

Sec. 3250. [**Trustees or directors may adopt by-laws.**] The trustees or directors of a corporation may adopt a code of by-laws for their government not inconsistent with the regulations of the corporation, or the constitution and laws of the state, and may change the same at pleasure.

Cited, State *v.* Hutchinson, 56 O. S. 86.

Sec. 3251. [**How regulations may be adopted.**] Regulations may be adopted or changed by the assent thereto, in writing, of two-thirds of the stockholders, or, if there is no capital stock, of the members, or by a majority of the stockholders or members, at a meeting held for that purpose, notice of which has been given by the acting president personally to each member or stockholder, or by publication in some newspaper of general circulation in the county in which the corporation is located, or in the counties through which its improvement does or will pass.

Omission in a constitution or by-laws of a power to amend, does not take from the corporation the power given by this section: Wangerien *v.* Aspell, 47 O. S. 250, 260.

Stockholder's assent being requisite to the amendment of a charter, he denying that he assented, is not concluded by the acts of other corporations. If his interests will be affected by acting under amended charter, he may, before it is accepted, invoke the aid of the state in quo warranto, or in an action by himself: Owen *v.* Purdy, 12 O. S. 79.

Sec. 3252. [**What may be provided for by regulations.**] A corporation, by its regulations, when no other provision is specially made in this title, may provide for—

1. The time, place, and manner of calling and conducting its meetings.

2. The number of stockholders or members constituting a quorum.

3. The time of the annual election for trustees or directors, and the mode and manner of giving notice thereof.

4. The duties and compensation of officers.

5. The manner of election, or appointment, and the tenure of office, of all officers other than the trustees or directors.

6. The qualification of members, when the corporation is not for profit.

This section does not seem to authorize a change of place of the principal office, but if it did it does not apply to manufacturing corporations, for they are otherwise provided for, viz: by § 3855; Mercantile Trust Co. *v.* Etna Iron Wks., 4 C. C. 579, 588.

Sec. 3253. [**How payment of stock subscriptions enforced.**] If an installment of stock remain unpaid for sixty days, after the time it is required to be paid, whether such stock is held by an assignee, transferee, or the original subscriber, the same may be collected by action, or the directors may sell the stock so unpaid at public auction, for the installment then due thereon, first giving thirty days' public notice of the time and place of sale, in some newspaper in general circulation in the county where the delinquent stockholder resided at the time of making the subscription, or of becoming such assignee

or transferee, or of his actual residence at the time of sale; or, if such stockholder resides out of the state, such publication shall be made in the county where the principal office of the company is located; if any residue of money remain after paying the amount due on the stock, the same shall, on demand, be paid to the owner; and if the whole of the installment be not paid by the sale, the remainder shall be recoverable by an action against the subscriber, assignee, or transferee. [51 v. 484, § 1; 50 v. 274, § 7; S. & C. 276, 319.]

See Rowland *v.* Meader Furniture Co., 38 O. S. 269, in note under § 3258.

Sec. 3254. [Stockholders entitled to certificates of stock; record of.] Stockholders shall be entitled to receive [certificates] of their paid up stock in the company; and the president and secretary of the company shall on demand, execute and deliver to a stockholder a certificate showing the true amount of the stock held by him in the company. And it shall be the duty of the directors of such corporation, when organized, to keep a record of all stock subscribed and transferred, and of the secretary or recording officer of such corporation to register therein all subscriptions and transfers of stock. For that purpose a book shall be kept and whenever any certificate or certificates of stock are assigned and delivered by a stockholder, the assignee thereof shall be entitled on demand to have the same duly transferred upon said book by such secretary or recording officer, whose duty it shall be at the same time to enroll therein also the name of said assignee as a stockholder, and the books and records of such corporation shall at all reasonable times be open to the inspection of every stockholder. [1884, April 14: 81 v. 196; Rev. Stat. 1880.]

Cited, Railway Co. *v.* Bank, 56 O. S. 379.

It is not necessary for one purchasing a certificate of stock to inquire as to its genuineness when the signatures of the president and secretary are genuine and the seal has been affixed and the paper on its face is a certificate of stock: *Id.*

A corporation may become the purchaser of its own stock, in payment of debts owing to it: Taylor *v.* Exporting Co., 6 O. 177; Ohio *v.* Franklin Bank, 10 O. 91; and this seems to be the only legitimate way in which it may become the owner of its own stock: State *v.* Franklin Bank, *supra*; but a corporation has no power to purchase the bonds of another corporation, for the purpose of controlling such corporation: State *v.* McDaniel, 22 O. S. 354.

It is doubtful whether directors of a corporation have power, unless it is expressly given, to pay dividends to stockholders not out of profit; and where directors have assumed to sell stock, and stipulated to pay annual interest thereon for a certain time, payment of such interest can not be enforced when the corporation has nothing out of which to make payment but its capital stock, and it owes other debts: Railroad Co. *v.* King, 17 O. S. 534.

When the directors of a corporation have ordered its treasurer to allow interest, payable in stock, to those subsequently paying installments on stock subscriptions, and such payments of interest are actually made, the order inures to the benefit of those stockholders who had paid their subscriptions before the order was made: City of Ohio *v.* Railroad Co., 6 O. S. 489.

The equitable owner of stock: certificates were out in the name of another who claimed to be owner, and who was on books of the company as such; corporation refused to transfer without return of certificates; the equitable owner sued corporation for value of stock, making legal owner party: Held, that upon such a state of facts plaintiff was not entitled to recover: National Bank of New London *v.* Lake Shore and M. S. R. R., 21 O. S. 221.

Where no stockbook was kept, stockholders whose names appear as such on the stubs of stock certificates may be held: Herrick *v.* Wardwell, 58 O. S. 294.

If an installment of stock in a railroad company remain unpaid by the original subscriber, an assignee of the stock may, upon making a proper tender of the unpaid installment, with interest, compel the corporation to issue to him a stock certificate: Railroad Co. *v.* Fink, 41 O. S. 321.

As against such an action, the statute of limitations will begin to run from the time of such tender: *Ib.*

The purchaser of shares in a private corporation, where the incidental rights of a stockholder do not depend on the ownership of these specific shares, is not entitled to a writ

of mandamus to compel their transfer: Freon *v.* Carriage Co., 42 O. S. 30; State *v.* Carpenter, 51 O. S. 83.

See note to Morgan *v.* Lewis, 46 O. S. 1, under § 3260.

Where the secretary of a railroad company fraudulently and criminally fills up a blank certificate of stock to himself, and hypothecates it to plaintiff, no inquiry being made by plaintiff as to its genuineness, the secretary was not acting as the agent of the company, but for himself: C. N. O. & T. P. Ry. Co. *v.* Third National Bank, 1 C. C. 199.

In such case, if there was negligence on the part of the company, to entitle the plaintiff to recover, it must be of such gross character as to amount to bad faith or fraud: *Ib.*

The plaintiff, in taking such certificate without inquiry as to its validity, was guilty of contributory negligence: *Ib.*

The loss of plaintiff, if any, was not the proximate result of the negligence of the directors of the company, but the crime of the secretary was the proximate cause thereof: *Ib.*

In a private corporation, the legal title to all corporate property, whether of original capital or increase arising from the corporate business, is in the corporation, and so remains until by a corporate act a portion or the entire assets are divided among the share holders: Marble *v.* National Bank, 3 C. C. 464.

A certificate of stock evidences the equitable interest a shareholder has in the property of the corporation, and fixes the proportion of any and all dividends to which he is entitled which are made while he is the owner of such certificate: *Ib.*

The sale and transfer of a certificate of stock, transfers to and vests in the vendee that proportion of the entire assets of the corporation which the certificate bears to the entire stock of the corporation, and no valid reservation of any portion of a future dividend can be made at the time of such sale and transfer: *Ib.*

Books to be open to inspection, cited Toledo Consol. St. Ry. *v.* Toledo Elect. St. Ry., 6 C. C. 362, 392.

Upon a refusal to the stockholder of an inspection of the corporation's books, injunction is the remedy: Blymyer *v.* Blymyer Iron Works Co., 5 N. P. 71.

The right is not limited to the stockholder's personal examination, but extends to those who represent him, as attorney, agent or expert bookkeeper: Blymyer *v.* Blymyer Iron Works Co., 5 N. P. 71.

A transfer to a fictitious person is void and a mere nullity: Krohn *v.* The Central Ry. & Bridge Co., 4 N. P. 270; 6 O. D. 552.

While a corporation may insist, upon a transfer of stock, that the transferee show his right to the property, when this is done, and the corporation refuses to transfer such stock, the holder may sue for damages or compel the acceptance of the transfer and issuing of a new certificate: Krohn *v.* The Central Ry. and Bridge Co., 4 N. P. 270; 6 O. D. 552.

The transferor not claiming any interest in the stock transferred, need not be a party to the suit: *Id.*

An assignment of a certificate may be in equity: Lawler *v.* Kell, Ex. 4 N. P. 218; 6 O. D. 311.

Where the transferor of a certificate intends to part with his title upon a valid consideration, but has failed, neglected or refused to endorse the certificate, he or his personal representative after his death may be compelled to make endorsement so that a transfer may be made on the books of the corporation: *Id.*

(3254—1) Sec. 1. [Re-issuing of certificates of stock lost or destroyed.] In case any certificate of stock in any corporation be lost or destroyed, the owner thereof may file his petition in the probate court of the county where the principal business office of such corporation is located in this state, setting forth a pertinent description of such certificate, and a full statement of the facts relating to such destruction or loss, including the fact that he is the owner of such certificate, and was at the time of its loss or destruction, and had not assigned, transferred or disposed of the same, and that the same was not pledged to any one, or if so, stating to whom, and the facts relating thereto, and such petitioner shall make the corporation and any pledgee defendants to such proceeding, and shall serve a certified copy of such petition on some chief officer of such corporation, and on any such pledgee, on which copies the probate judge shall state over his signature when said petition will be heard, and said copies shall be so served not less than twenty days before the hearing, and such petitioner shall also publish, for three consecutive weeks, in some newspaper published and of general circulation in the county where the proceeding is pending, and in the county where the petitioner resides the notice containing the substance and prayer of such petition immediately before the day of hearing, and stating when and where the same will be heard. [88 v. 336.]

(3254—2) Sec. 2. [How re-issue effected.] If the probate court, upon the hearing, find that the foregoing provisions have been complied with, and that such described certificate has been lost or destroyed, and that such petitioner at that time was and is the owner thereof, an order shall be made that such corporation issue and deliver a new certificate of stock to such petitioner for the original amount and kind of stock, and in case, at the time of such loss or destruction of such original certificate, the certificate was pledged to any one, and the pledgee yet has a claim against the same, then such order shall direct that such new certificate shall be delivered to such pledgee on such terms as the court may direct, and the corporation shall comply with said orders, and shall in no wise be prejudiced by complying with said orders, or by paying dividends on such new certificate, so long as it is not made known to it that such original certificate is in existence and owned by some person other than said petitioner; and all rights and liabilities attaching to said original certificate shall attach to said re-issued certificate, while in force, but upon the production of the original certificate to such corporation by the owner or pledgee, such re-issued certificate shall be canceled and surrendered, and be void, and executors and administrators, on behalf of estates of deceased owners of any such lost or destroyed certificates of stock, shall be entitled to proceed under this act and have all the rights and benefits thereof. [88 v. 336.]

Sec. 3255. [Paid up stock is personal property.] Shares of stock in any company shall be personal property, and when fully paid up shall be subject to levy and sale upon execution against the owner. [50 v. 274, § 5; S. & C. 276.]

The interest of a stockholder in the property of a private corporation, represented by certificates of shares registered in his name, may be reached by garnishee process served upon the corporation: Norton *v.* Norton, 43 O. S. 509.

Sec. 3256. [May borrow money on bond and mortgage.] A corporation may borrow money, not exceeding the amount of its capital stock, and issue its notes or coupon or registered bonds therefor, bearing any rate of interest authorized by law, and may secure the payment of the same by a mortgage of its real or personal property, or both;

[May purchase stock in other companies.] and a private corporation may purchase, or otherwise acquire, and hold shares of stock in other kindred but not competing private corporations, whether domestic or foreign, but this shall not authorize the formation of any trust or combination for the purpose of restricting trade or competition. [R. S. of 1880; 95 v. 151; 95 v. 390.]

The act of 95 v. 390, amending this section, does not specifically repeal the amendment of 95 v. 151.

Power to borrow conferred on company owning bridge over Ohio River, §3548*a*.

A creditor of a corporation when he takes a mortgage to secure his debt, should know whether the corporation has the power to contract the debt and secure it by mortgage, but he need not know whether by a meeting of the directors the authority was given to borrow or give security, or whether the directors are legally elected or not: Bosche *v.* Toledo Horse Display Co., 14 C. C. 294; 7 O. D. 374.

See note to same case under § 3239.

A corporation may borrow money to carry on its business or to pay its debt, and for this purpose can mortgage all of its property: Bosche *v.* Toledo Horse Display Co., 14 C. C. 289; 7 O. D. 374.

A president of a corporation has no power to mortgage the corporation's property or to confess judgment for money borrowed: Smead Foundry Co. *v.* Chesbrough, 3 O. D. 534.

And this although owner of nearly all the capital stock and the manager of its affairs: *Id.*

Sec. 3256*a*. [When mortgage of certain corporations deemed to be duly recorded; when lien effective.] Such mortgage of real and personal property when heretofore or hereafter made by a company organized to operate a line or lines of telegraph, telephone, district telegraph messenger service, or for the purpose of supplying gas or electricity [or hot water] for lighting, fuel or other purposes, or hot water, or steam, for heating or fuel purposes shall be held to be duly recorded if the same is recorded in the office of the recorder of deeds in the county and each of the counties in which the real or personal property intended to be mortgaged is situate or employed; and the mortgage so recorded shall be held to be a good and sufficient lien from the date of the filing of the same for record in each county where it is recorded as well upon the personal as the real property of the company. [95 v. 366, May 6, 1902.]

Sec. 3257. [May stipulate that its obligations may be converted into stock.] Upon the written assent of not less than three-fourths of the stockholders, representing at least three-fourths of the capital stock of the company actually paid, any company may borrow money not exceeding one-half of the capital stock actually paid in, on such security, by way of mortgage, or otherwise, as may be agreed upon, and at a rate of interest not exceeding that allowed by law to be contracted for, and may, in the instruments evidencing the contract, stipulate that the holders of such instruments shall have the right to convert the amount borrowed, or any part thereof, into either common or preferred stock, such stock having been provided for by the proper action and certificate of the company; any action of the directors for borrowing money, issuing bonds, or involving an expenditure of money shall be by yea and nay vote, and record thereof shall be made showing the vote of each director voting upon the question. [67 v. 26, §§ 1, 2, 3, 4.]

By this section the legislature did not intend to authorize the creation of additional stockholders, and to exempt them from individual liability to creditors, but to enable such corporations, upon the terms therein provided, to borrow money, and guarantee its repayment, with the option on the part of the lenders to become stockholders: Burt *v.* Rattle, 31 O. S. 116.

Sec. 3258. [Stockholders liable in an amount equal to their stock.] The stockholders of a corporation who are the holders of its shares at a time when its debts and liabilities are enforcible against them, shall

be deemed and held liable, equally and ratably, and not one for another, in addition to their stock, in an amount equal to the stock by them so held, to the creditors of the corporation, to secure the payment of such debts and liabilities; and no stockholder who shall transfer his stock in good faith, and such transfer is made on the books of the company, or on the back of the certificate of stock properly witnessed or tendered for transfer on the books of the company prior to the time when such debts and liabilities are so enforcible, shall be held to pay any portion thereof. Provided, however, that the above provisions of this section shall not apply to stockholders in any corporation created after the twenty-third of November, 1903, nor shall it apply to any debts or liabilities of any corporation incurred after said date; and as to all debts and liabilities of corporation for profit incurred after said date, the stockholders of said corporation shall be under no liabilities other than those stated in Article XIII, Section three, of the constitution of Ohio. [1904, April 23; 52 v. 44, § 78; S. & C. 310; R. S. of 1880; 95 v. 312.]

It is well settled that, unless they have received assets of the corporation which were liable to the payment of its debts, or have agreed to pay the debts, the stockholders of a corporation are not liable for the debts of the corporation, except when made so by charter or a statute: Carr *v.* Iglehart, 3 O. S. 457. See, also, State *v.* Sherman, 22 O. S. 411.

An act which authorizes the creation of a corporation, without providing for the liability of its stockholders to its creditors to an amount at least equal to the stock owned by each, is unconstitutional and void: State *v.* Sherman, *supra;* and such liability may be imposed either by express provision or by requiring of the stockholders such acts of organization, or other acts, as will subject them to the provisions of § 3, Art. XIII, of the Constitution, which, to the extent of the amount of stock owned by each stockholder, is self-executing: *Ib.*

This liability of stockholders is not a primary resource or fund for the payment of the debts of the corporation, but is collateral and conditional to the principal obligation which rests upon the corporation, and is to be resorted to by creditors only in case of the insolvency of the corporation, or when payment can not be enforced against it by ordinary process: Wright *v.* McCormack, 17 O. S. 86.

As between stockholders, each is bound to contribute in proportion to his stock, but the liability of each is separate, and it, and the right arising out of it, is to and for the exclusive benefit of all the creditors: Wright *v.* McCormack, *supra;* Umstead *v.* Buskirk, 17 O. S. 113; and an assignment of this liability by the corporation, though for the mutual benefit of all its creditors, is therefore inoperative: *Ib.*

A stipulation in a policy of insurance issued by an insurance corporation, limiting the time within which an action may be brought thereon, is not a limitation on the right of action of a creditor against stockholders to enforce this liability: Davis *v.* Stewart, 26 O. S. 643.

A transfer of the stock in a turnpike company to a fictitious person is void: Muskingum Valley Turnpike Co. *v.* Ward, 13 O. 120.

That personal liability does not attach to stockholders as partners or otherwise, from the circumstance that the powers of the association have been exceeded without their authorization, is a principle well settled: Bank *v.* Hall, 35 O. S. 166.

Those only who engage in or sanction the business not within the purposes for which the association was organized, are liable for the debts contracted in carrying such unlawful business forward: *Ib.* 166.

The individual or personal liability of stockholders attaches in favor of creditors at the time the debt is contracted or the liability incurred by the corporation. After such liability attaches, it is not discharged by assignment or transfer, but the successive holders impliedly undertake to indemnify the assignor from the liability which attached to him while he held the stock. In suit to enforce individual liability, the existing stockholders are liable, and if by reason of insolvency the amount is not collectible, the assignors of the stock, up to the time the liability attached, may be charged with the deficiency: Brown *v.* Hitchcock, 36 O. S. 667. McIlvaine and Johnson, JJ. dissented.

In an action brought by a creditor of an insolvent corporation to enforce the individual liability of two persons who were stockholders at the time the debt was created, but who had assigned their stock prior to the time the suit was begun, it was held that said assignees were necessary parties to a final determination of the rights and liabilities of all the parties interested; and in refusing an order to make them parties the court committed error: Wheeler *v.* Faurot, 37 O. S. 26.

Corporations *de facto* and *de jure* stand on the same footing as respects their liability to creditors. Gaff *v.* Flesher, 33 O. S. 115, 453, followed: Rowland *v.* Meader Furniture Co., 38 O. S. 269. See note to this case under § 3260.

A pledgee of shares of stock who does not have them transferred to him on the books of the company, is not liable for the debts of the corporation: Henkle *v.* Salem Mfg. Co., 39 O. S. 553.

Stockholders are not released from liability because they are not the owners of stock at the time the debt accrued. In order to be released, it must appear that the stock they held had not been sold by the corporation prior to the time such liability accrued: Bonewitz *v.* Bank, 41 O. S. 78, 79.

Cited in Freon *v.* Carriage Co., 42 O. S. 30.

See note to Mason *v.* Alexander, 44 O. S. 318, under § 3260.

See note to Morgan *v.* Lewis, 46 O. S. 1, under § 3260.

Where a defendant, who prior to the insolvency of the corporation had sold his stock, answers, praying that judgment be taken against his vendee, appeals from a judgment rendered against himself, the appeal carries his vendee, also a defendant, into the appellate court, whether the vendee has appealed or not: Harbold *v.* Stobart, 46 O. S. 400.

Entries of transfers of stock must be made in the proper transfer book: *Ib.*

A stockholder who, in good faith, sells and transfers his stock to one who afterwards becomes insolvent, is liable for such portion only of debts existing, while he held stock, as will be equal to the porportion which the stock assigned bears to the stock held by solvent stockholders, within the jurisdiction, liable in respect to the same debts: *Ib.*

Stockholders' liability, limitation of, is six years from insolvency: What is insolvency? Bronson *v.* Schneider, 49 O. S. 438; and see Younglove *v.* Lime Co., 49 O. S. 663; Barrick *v.* Gifford, 47 O. S. 180.

A creditor's extension of time on the debt will not relieve a former stockholder from his double liability: Boice *v.* Hodge, 51 O. S. 236.

Where prior to the institution of an action to assess stockholders' liability, it is not known that there must be an assessment in the maximum amount, interest will only run from the time of the confirming of the report of the referee: Berger *v.* Bank, 5 N. P. 176.

Where a final judgment has been rendered in a suit to assess stockholders' liabilities by a creditor for himself and all the creditors, such judgment is a final determination of all stockholders' liability, notwithstanding pendency of proceedings in error: Swan et al. *v.* M. C. & L. M. Ry. Co., 3 N. P. 225; 6 O. D. 162.

Where in a suit to assess stockholders' liability, it appears by the referee's report that only seventy-five per cent. will be realized by creditors on their claims, and all creditors except one agreed to a compromise decree, the non-consenting creditor can only recover seventy-five per cent. of his claim. Ferris *v.* Anton et al., 12 C. C. 134; 5 O. D. 532.

Where partners create a corporation to continue business, and capitalize the partnership property at an inflated value, the capital stock of the corporation amounting to such inflated value, and issue the shares of stock to the partners as paid-up, each partner receiving in proportion to his interest in the partnership; held to be a fraud upon the corporation creditors, regardless of the stockholders' intentions, and that after deducting the true value of the partnership property transferred, the balance is a debt due the corporation: Gates, Admr. *v.* Tippecanoe Stone Co. et al., 57 O. S. 60.

Sec. 3258*a*. [**Within what time action may be brought to enforce such liability.**] An action upon the liability of stockholders under the last preceding section, can only be brought within eighteen months after the debt or obligation shall become enforcible against stockholders. [1904, April 23; 95 v. 313, April 29, 1902.]

Sec. 3259. [**The term "stockholders" defined.**] The term "stockholders," as used in the preceding section, shall apply not only to such persons as appear by the books of the corporation to be such, but to any equitable owner of stock, although the stock appears on the books in the name of another.

Where stocks which have been fraudulently obtained are assigned simply as collateral security for a pre-existing debt, that is not such a consideration as to make the holder a *bona fide* holder for value: Cleveland *v.* State Bank of Ohio, 16 O. S. 236.

One who holds shares of stock merely as collateral security for a debt, without a transfer thereof to him on the books of the company, is not the legal or equitable owner of such stock. He would not be entitled to vote upon it as against his pledgor, and if he received any dividends, the same would be credited upon the debt as security for which he held it: Henkle *v.* Salem Mfg. Co., 39 O. S. 553. See note to same case in preceding section.

One who holds stock in trust for the corporation is nevertheless personally subject to the double liability, although the certificate shows the trust, § 3259, making equitable owners liable, is cumulative, and does not relieve the legal owner: Holcomb *v.* Gibson, Supreme Court without report, 39 W. L. B. 380.

Cited in Railway Co. *v.* Bank, 1 C. C. 199.

See Swan et al. *v.* M. C. & L. M. R. R. Co., 3 N. P. 225; 6 O. D. 162, under § 3258.

Sec. 3260. [**Where complaint for enforcement of liability filed.**] Whenever any creditor of a corporation seeks to charge the directors, trustees, or other superintending officers of a corporation, or the stockholders thereof on account of any liability created by law, he may file his complaint for that purpose in any common pleas court which

possesses jurisdiction to enforce such liability. [94 v. 359; 91 v. 88; R. S. of 1880.]

As to the appointment of receiver, etc., generally, see §5587 et seq.

As to dissolution of corporations, see §5651 et seq.

The following decisions were rendered prior to the amendment of 94 v. 359:

Before the enactment of this section, it was held, in Wright *v.* McCormack, and Umstead *v.* Buskirk, *supra* (§ 3258), that the action by a creditor to enforce the liability of stockholders should be for the benefit of all the creditors, and against all the stockholders, and the corporation should be a party; and that stockholders whose liability is sought to be enforced may insist on their co-stockholders being made parties, for the purpose of a general account, and to enforce from them contribution.

Corporations *de facto* and *de jure* stand on the same footing as respects their liability to creditors; the liability of the stockholders of the former, whether arising by statute or on stock-subscription, may be enforced for the benefit of creditors the same as the liability of the latter. Gaff *v.* Flesher, 33 O. S. 115, 453, followed: Rowland *v.* Meader Furniture Co., 38 O. S. 269.

Ouster of a corporation *de facto* affords no defense to such liability: *Ib.*

Sections 5011 and 5370 not applicable to corporations *de jure* or *de facto*. Stockholders in corporation *de facto* can not be charged as partners with the payment of a judgment against the corporation: *Ib.*

The effect of a judgment against certain stockholders in a case in which all of the stockholders were not made parties: Bullock *v.* Kilgour, 39 O. S. 543.

As to when persons who have taken steps toward incorporation, and who conduct business in an associate manner, may be charged on an individual liability as partners: Ridenour *v.* Mayo, 40 O. S. 9.

See notes to § 3258.

In such an action, where all the stockholders are not before the court, and it does not appear that those not served with process could not have been served, it is error to assess upon the stockholders served the whole amount of the indebtedness of the corporation: Bonewitz v. Bank, 41 O. S. 78.

In a suit to enforce liability of stockholders, brought prior to the enactment of § 3260, Revised Statutes, by the creditor of an insolvent corporation in a county where some of the stockholders reside, but not where the corporation is situate and has its principal office or place of business, and the parties consent to a reference, appear before the referee, etc., it is too late after the case has been appealed to the district court to question the jurisdiction of the appellate court: Mason *v.* Alexander, 44 O. S. 319.

As to the right of a court to adjudicate as between stockholders who are parties and creditors, and continue the case for further proceedings as to other stockholders: *Ib.*

It is not error to include interest, although the amount thereby recovered may exceed the stockholder's original liability: *Ib.*

Reasonable counsel fees may be allowed to plaintiff's attorney: *Ib.*

If the amount due from any stockholder is not collectible, the assignor of the stock, up to the time the liability attached, may be charged with the deficiency. Brown *v.* Hitchcock, 36 O. S. 667, followed: *Ib.*

Petition need not allege the return of execution unsatisfied, levied under plaintiff's judgment. It is sufficient if insolvency, assignment, cessation of business, and want of money, credit, or materials, are alleged. A transaction, in good faith, by which, to save itself from loss, a corporation (before the debt upon which it is sought to hold stockholders was contracted) re-exchange the property for which it gave its stock, and took back its stock, was upheld. After such re-exchange, the former stockholder is not liable for debts subsequently contracted: Morgan *v.* Lewis, 46 O. S. 1. Spear, J. dissented.

The several creditors are neither necessary nor proper parties in proceedings in error in a suit to assess stockholders' liability: Herrick *v.* Wardwell, 58 O. S. 306.

The proceedings in the trial or appellate court inure to the benefit of all creditors: *Id.*

To maintain a suit to enforce the statutory liability of a deceased holder of stock in an insolvent corporation, it is not essential that a claim on account of such liability be first exhibited to his personal representative: Wanz *v.* Park Hotel Co., 1 C. C. 105.

In such a suit by a creditor, where the stock subscription book shows that the subscriptions were made subsequent to the filing of the articles of incorporation, such stockholders will not be permitted to show that such subscriptions were made prior to the filing of said articles: Royce & Pulling *v.* Tyler, 2 C. C. 175.

Proof that certain of the subscribers to stock, under an arrangement with one of the promoters of the enterprise, drew up and signed a cancellation of their own subscriptions, does not relieve such stock subscribers from liability to the creditors of the corporation: *Ib.*

Where a member of an insolvent corporation voluntarily pays the debts of the corporation, he can not recover from another member, who was at the time of such payment solvent and within the same jurisdiction, his *pro rata* share of such indebtedness: Burr, Admr. *v.* Bates, Admr., 3 C. C. 1. Shauck, J. dissented.

Neglect of plaintiff to bring in all stockholders within the jurisdiction must not prejudice defendants: North *v.* Newark & C. R. R., 8 C. C. 583, 588; 1 O. D. 380 (modified in 54 O. S. 562).

Attachment lies: Northern Nat. Bank *v.* Maumee Rolling Mill, 2 N. P. 260; 2 O. D. 67.

See Swan et al. *v.* M. C. & L. M. R. R. Co., 3 N. P. 225; 6 O. D. 162, under § 3258.

Where in a suit to assess stockholders' liability it appears by the referee's report that only seventy-five per cent. will be realized by creditors on their claims, and all creditors except one agreed to a compromise decree, the non-consenting creditor can only recover seventy-five per cent. of his claim: Ferris *v.* Anton et al., 12 C. C. 134; 5 O. D. 532.

Sec. 3260*a*. [**Action by court; appointment of receiver.**] The court shall proceed thereon, as in other cases, and, when necessary,

shall cause an account to be taken of the property and obligations due to and from such corporation, and may appoint one or more receivers. [94 v. 360.]

Sec. 3260*b*. [**Enforcement of liability upon insolvent corporation.**] If, on the coming in of the answer or upon the taking of such account, it appears that such corporation is insolvent, and has not sufficient property or effects to satisfy such creditor, the court may proceed to ascertain the respective liabilities of the directors, officers and stockholders, and enforce the same by its judgment, as in other cases. [94 v. 360.]

Sec. 3260*c*. [**Notice to non-resident stockholders; collection of unpaid installments of stock.**] In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the court shall give notice to non-resident stockholders as provided in sections 5048, 5049, 5050, 5051 or 5052 of the Revised Statutes, and shall first proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the company. [94 v. 360.]

Sec. 3260*d*. [**Court to ascertain and adjudge liabilities of officers and stockholders.**] If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment, as in other cases.

[**Prosecutions by receiver.**] The court may authorize and direct the receiver to prosecute such action in his own name as receiver, as may be necessary, in other jurisdictions to collect the amount found due from any officer or stockholder. [94 v. 360.]

Sec. 3260*e*. [**Notice to creditors.**] Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment. [94 v. 360.]

Sec. 3260*f*. [**Distribution of property and assets of insolvent corporation.**] Upon a final judgment in any such action against an insolvent corporation, the court shall cause a just and fair distribu-

tion of the property and assets of such corporation or the proceeds thereof to be made among its creditors. [94 v. 360.]

Sec. 3261. [Trustees are personally liable for all debts by them contracted.] The trustees of a corporation created for a purpose other than profit, shall be personally liable for all debts of the corporation by them contracted. [52 v. 44, § 78; S. & C. 310.]

The individual liability of trustees of an incorporated benevolent association for debts contracted by them, is collateral and conditional to the principal obligation which rests on the corporation: Walbrecht *v.* Pucketat (Ham. Dist. Court), 9 W. L. B. 335.

That a corporation has a capital stock and incidentally benefits its members, will not exclude the liability imposed by this section: Snyder *v.* Chamber of Commerce, 53 O. S. 1.

A receiver may be appointed to collect from stockholders, but the judgment against them must be in the original action brought by a creditor under § 3260: Zieverink *v.* Kemper, 50 O. S. 208, 221.

Cited Mahaffey *v.* Rogers, 10 C. C. 24, 26.

Trustees of a Mutual Insurance Co., under § 3686 are not personally liable for a fire loss, though the risk was ultra vires: Manuf. Ass'n. *v.* Lynchburg Drug Mills, 8 C. C. 112; 1 O. D. 364.

Sec. 3262. [Increase of capital stock.] A corporation for profit, after its original capital stock is fully subscribed for, and an installment of ten per cent. on each share of stock has been paid thereon, or a corporation not for profit, having a capital stock, may increase its capital stock or the number of shares into which its capital stock is divided, by the unanimous written consent of all original subscribers, if done prior to organization, and after organization then by a vote of the holders of a majority of its stock, at a meeting called by a majority of its directors, at least thirty days' notice of the time, place and object of which has been given by publication in some newspaper of general circulation, and by letter addressed to each stockholder whose place of residence is known; or such increase may be made at any meeting of the stockholders at which all the holders of such stock are present in person, or by proxy, and waive in writing such notice by publication and by letter; and also agree in writing to such increase, naming the amount of increase to which they agree; and a certificate of such action of the corporation shall be filed with the secretary of state. [90 v. 141; 83 v. 134; 80 v. 23; Rev. Stat. 1880; 69 v. 24; 70 v. 37, § 1.]

Cited Miller *v.* Ratterman, 47 O. S. 141, 157.

A supplementary § 3262*a* was passed 1882, April 17 (79 v. 110); was repealed 1886, May 11. (83 v. 134), by an act, the second section of which reads as follows:

"SEC. 2. That section 3262, as amended February 16, 1883 (80 v. 23), 3262*a*, as enacted February 17, 1882 (79 v. 110), 3264, and 3821*a*, as enacted April 15, 1882 (79 v. 130), are repealed."

Attention is called to the fact that *February* is specified in the repeal, instead of *April*.

Where increase of stock of a mining company has been determined upon, and stockholders decline to pay for part of the stock, the power of the company to dispose of the stock is complete; and the agreement to take shares may be enforced by action, although the whole of the increased stock is never taken: Clark *v.* Thomas, 34 O. S. 46.

Where stock issue has been irregular, but stockholder has acquiesced, he is bound on stock liability: *Ib.*

Stock must be fully paid up before right to increase capital stock accrues: Peter *v.* The Union Manfg. Co. et al., 56 O. S. 200.

Sec. 3263. [May increase stock by preferred stock.] Upon the assent in writing of three-fourths in number of the stockholders of any corporation, representing at least three-fourths of its capital stock, the corporation may, to increase its capital stock, issue and dispose

of preferred stock, as is authorized in section 3235*a;* and upon any such increase of stock, a certificate shall be filed with the secretary of state, as is provided in the preceding section. [71 v. 69 (19), §§ 1, 2; R. S. of 1880; 95 v. 624.]

The act of 1890 (67 v. 89), to enable railroads to redeem their bonded debts authorized preferred stock, but not certificates of indebtedness. Holders of certificates under this act are preferred stockholders and not taxable on their certificates: Miller *v.* Ratterman 47 O. S. 141.

Certificates of preferred stock of the Ohio & Mississippi Railway Company were issued containing the following language: "The preferred stock is to be and remain a first claim upon the property of the company after its indebtedness, and the holder thereof shall be entitled to receive from the net earnings of the company seven per cent. per annum, payable semi-annually, and to have such interest paid in full, for each and every year, before any payment of dividend upon the common stock; and whenever the net earnings of the corporation, which shall be applied in payment of interest on preferred stock and of dividends on the common stock, shall be more than sufficient to pay both said interest of seven per cent. on the preferred stock in full, and seven per cent. dividend on the common stock for the year in which said net earnings are so applied, then the excess of such net earnings, after such payments, shall be divided upon the preferred and common shares equally, share by share:" Held, that the preferred stockholders had no claim on the property superior to that of creditors under debts contracted by the company subsequently to the issue of the preferred stock, and that their only valid claim was one to a priority over the holders of common stock: Warren *v.* King, 108 U. S. Supreme Court 389.

An agreement by stockholders that new subscribers shall receive a preferred dividend is not an issue of preferred stock, but is valid: Painesville Nat. Bank *v.* King Varnish Co., 8 C. C. 563; 1 O. D. 574.

Sec. 3264. [**Reduction of capital stock.**] The board of directors of any such corporation may, with the written consent of the persons in whose names a majority of the shares of the capital stock thereof stands on the books of the company, reduce the amount of its capital stock and the nominal value of all the shares thereof, and issue certificates therefor; but the rights of creditors shall not be affected or impaired thereby; and a certificate of such action shall be filed with the secretary of state. [1886, May 11: 83 v. 134; Rev. Stat. 1880; 50 v. 274, § 74; 65 v. 51, §§ 1, 2, 3, 4, 5; (S. & C. 309; S. & S. 242).]

As a general rule, a corporation can not deal in its own stock. It can not decrease the amount of the same, except as provided by statute; but it may take back its own stock in satisfaction of a debt due to it, on the ground that such act is necessary to avoid loss: Morgan *v.* Lewis, 46 O. S. 1.

Sec. 3265. [**Change of bonds authorized.**] A corporation which has lawfully issued or may hereafter lawfully issue its registered or coupon bonds, may, upon request of the holder thereof, change such registered bonds into coupon bonds, or such coupon bonds into registered bonds either by substitution, or proper indorsement thereon; and all liens, securities, and rights which existed or accrued to such original bonds shall continue to such substituted or indorsed bonds, the same as if such substitution or indorsement had not been made. [73 v. 123, §§ 1, 2.]

Sec. 3266. [**Corporate property to be employed only for the objects of the corporation.**] No corporation shall employ its stocks, means, assets, or other property, directly or indirectly, for any other purpose whatever than to accomplish the legitimate objects of its creation. [50 v. 274, § 73; S. & C. 309.]

A corporation organized under the general incorporation act of May 1, 1852, for the purpose of manufacturing and supplying gas to the inhabitants of a city or village, may borrow money to enable it to accomplish the legitimate objects of its creation; and secure

the payment of the same by note and a mortgage of the corporate property: Hays *v.* Galion Gas Light and Coal Co., 29 O. S. 330.

A corporation can not make a valid subscription to the stock of another corporation, unless authorized by statute: Railway Co. *v.* Iron Co., 46 O. S. 44.

Sec. 3267. [**Change in number of directors.**] A company may, by a vote of a majority of its stock, at any regular meeting of the company, increase the number of directors to any number not greater than fifteen, or decrease the number before or after such increase to any number not below five; provided, that at any stockholders' meeting, called in the manner and as provided in section *three thousand two hundred and forty-six,* and notice of which has been given in accordance with the provisions thereof, any corporation, incorporated for manufacturing purposes, may, by a vote of a majority of its stock, increase the number of its directors as hereinbefore provided, who shall hold their offices respectively until the next annual election for directors, and until their successors are elected and qualified. [1886, May 15: 83 v. 163; Rev. Stat. 1880.]

Sec. 3268. [**Annual statement of condition of corporation to be furnished stockholders.**] Every corporation organized under the laws of this state shall make a statement annually of its financial condition, setting forth its assets and liabilities, and shall furnish to each stockholder a true copy of the same, together with a list of the stockholders thereof and their place of residence.

This section applies as well to a policy issued by a company organized and conducted outside the limits of Ohio as to a policy issued by a company of this state: Cross *v.* Armstrong, 44 O. S. 613, 614.

As to the right of the administrator to share in the fund where suit has been previously brought and judgment obtained against the company by the widow, in a court in the state where such company is located, and an order made in such court making the administrator a party: *Ib.*

Sec. 3269. [**When provisions of this chapter do not apply.**] The provisions of this chapter do not apply when special provision is made in the subsequent chapters of this title, but the special provision shall govern, unless it clearly appear that the provisions are cumulative; and no corporation shall by anything in this title be relieved from any liability in actions now pending or causes of action heretofore accrued.

DIVIDENDS.

(3269—1) **Sec. 1.** [**Corporate dividends to be paid from surplus profits only.**] *Be it enacted by the General Assembly of the State of Ohio,* That it shall not be lawful for the directors of any corporation organized under the laws of this state to make dividends except from the surplus profits arising from the business of the corporation. [1888, April 11: 85 v. 182.]

(3269—2) **Sec. 2.** [**Unpaid interest due corporation not to be included in profits.**] In the calculation of the profits of any corporation previous to a dividend, interest then unpaid, although due, on

debts owing to the company, shall not be included. [1888, April 11: 85 v. 182.]

(3269—3) **Sec. 3. [Surplus profits: how ascertained; prohibiting advertisement of capital not subscribed and paid in.]** In order to ascertain the surplus profits, from which alone a dividend can be made, there shall be charged in the account of profit and loss, and deducted from the actual profits—

1. All the expenses paid or incurred, both ordinary and extraordinary, attending the management of the affairs and the transaction of the business of the corporation.

2. Interest paid, or then due or accrued on debts owing by the corporation.

3. All losses sustained by the corporation, and in the computation of such losses, all debts owing to the corporation shall be included which shall have remained due without prosecution, and no interest having been paid thereon for more than one year, or on which judgment shall have been recovered, and shall have remained for more than two years unsatisfied, and on which no interest shall have been paid during that period; and no such corporation shall advertise a larger amount of capital stock than has actually been subscribed and paid in; also, shall not advertise a greater dividend than what has been actually earned and credited or paid to its stockholders or members. [1889, April 10: 86 v. 228; 85 v. 182, 183.]

(3269—4) **Sec. 4. [Penalty for violation of section 3.]** Every director who shall violate, or be concerned in violating, any provision in the preceding sections of this act contained, shall be liable personally to the creditors and stockholders respectively of the corporation of which he shall be a director, to the full extent of any loss they may respectively sustain from such violation. [1888, April 11: 85 v. 182, 183.]

§ (3269—5) was changed by the legislature to § 148*d*.

NOTES TO CHAPTER.

Foreign Corporations: It is not contrary to the laws of Ohio, nor against public policy, in the present condition of her laws, for a foreign corporation, lawfully organized in a sister state, to do business in Ohio: Petroleum Co. *v.* Weare, 27 O. S. 343; and a foreign corporation, authorized by the laws of the state in which it was organized to do business in this state, may transact business in Ohio not inconsistent with Ohio law, and may sue and be sued in our courts: *Ib.* Foreign corporations can exercise none of their franchises or powers within the state except by comity or legislative consent, and that consent may be upon such terms and conditions as the general assembly, under its legislative power, may impose: Telegraph Co. *v.* Mayer, 28 O. S. 522; and the privilege that a foreign corporation enjoys by legislative consent, of exercising its corporate powers and carrying on its business, is not *property* within the meaning of § 2, Art. XII, of the Constitution: *Ib.*

Upon principles of comity, foreign corporations have always been allowed to sue in this and other states of the Union: Lewis *v.* Bank of Kentucky, 12 O. 132; and such corporations are entitled to the benefit of remedial statutes which in terms apply only to corporations created in this state: *Ib.* A foreign corporation, suing in the courts of this state, is not required to set out in the petition the terms of its charter, showing its capacity to maintain the action: Smith *v.* Sewing Machine Co., 26 O. S. 562; but if the charter, or the powers and franchises, granted by a foreign state to a corporation located in this state or elsewhere, become the foundation of an action in this state, they must be specially pleaded, and a pleading for that purpose, which does not disclose the state by which, nor the terms in

which, they were granted, is bad on demurrer: Devoss *v.* Gray, 22 O. S. 159.

Persons contracting with a foreign corporation concerning property, or rights in property, appropriated to its business in Ohio, after dealing with the corporation, and by their acts recognizing its validity, and receiving the benefits of the contract, will be estopped, in an action on the contract, from denying the power of the corporation to make the contract: Petroleum Co. *v.* Weare, *supra;* and a corporation chartered and organized in a sister state, with power to do business in Ohio, may be made party defendant to an action of replevin, in place of its agent, against whom the action is brought, and recover in the action the value of the property replevied, although it has done no business in the state of its creation: Hanna *v.* Petroleum Co., 23 O. S. 622.

Under the laws of Ohio, foreign railroad corporations, whose roads lie partly within this state, are accorded the right to own, operate, and maintain their roads in Ohio, in the same manner as domestic companies: State *v.* Sherman, 22 O. S. 411; and when such, or another, corporation, in pursuance of an act of the general assembly, transfers or conveys its franchise to be a corporation to others, the transaction, in legal effect, is a surrender or abandonment of its charter by the corporation, and the grant by the general assembly of a similar character to the transferees or purchasers; and the charter so granted is subject to all the provisions of the Constitution existing at the time it is granted: *Ib.*

In respect to the jurisdiction of the federal courts in controversies between citizens of different states, a foreign corporation is regarded as a citizen of the state where it was created: Shelby *v.* Hoffman, 7 O. S. 451; Railroad Co. *v.* Cary, 28 O. S. 208; but they are not citizens entitled to all the privileges and immunities of citizens of the several states, within the meaning of § 2, Art. IV, of the Constitution of the United States, that provision being applicable to natural persons only: Telegraph Co. *v.* Mayer, 28 O. S. 522; but such corporation, not being a citizen of Ohio, when sued by a citizen of this state, is entitled, under § 12 of the judiciary act of 1789, to have the case removed from the state court to a United States court: Railroad Co. *v.* Cary, *supra;* and a foreign railroad corporation, by merely leasing, possessing, and operating in this state the property of a domestic corporation, does not thereby become an Ohio corporation, nor such citizen of the state: *Ib.*

A corporation of another state, authorized to raise money by the sale of its bonds, may itself sell the bonds directly, either within or without that state, and such transaction will not be regarded as a loan: Bank of Ashland *v.* Jones, 16 O. S. 145; and before such sale can be declared invalid, as in contravention of the settled policy of that state, the repugnancy must be plain and substantial; and the fact that bonds sold in this state bear a higher rate of interest than is prescribed for similar bonds issued under the authority of this state, but which are authorized to be sold at any price, creates no such repugnancy: *Ib.*

The charter of a corporation, created by the legislation of another state, was sufficiently broad to confer upon it a capacity to take and hold real estate by devise, although it did not *expressly* authorize it so to take: Held, that a provision of the statute of wills of that state, that "no devise of real estate to a corporation shall be valid unless such corporation be expressly authorized by its charter, or by statute, to take by devise," is operative only to the extent of disabling the corporation to take by devise real estate in that state, and does not affect its power to take by devise real estate in Ohio: American Bible Society *v.* Marshall, 15 O. S. 537.

Dissolution of corporations: The modes by which a corporation in Ohio may be dissolved are: 1. By the death of its members; 2. Surrender of its franchises; and, 3. A judgment of forfeiture for non-user or abuse: Trustees, etc., *v.* Manufacturing Co., 9 O. 203; but now, by the provisions of §§ 5651, 5673, and 5674, an additional mode is provided.

Forfeiture of franchise or charter: In the absence of express legislative provisions, the forfeiture of the charter of a corporation can only be established by judicial action, and can not be inquired into collaterally: Bank *v.* Renick, 15 O. 322; and a corporation having done all the law required, previous to the appointment of a commissioner by the governor to examine its vaults, which the governor neglected to do, a person who has done business with it as a bank, and admitted its existence by the receipt of its funds, cannot, in a suit against himself by the receivers of the bank, question the legality of its organization: *Ib.*

It does not work a forfeiture of the charter of a corporation authorized to loan money, without restriction as to the rate of interest, to receive more than six per centum interest: State *v.* Insurance Co., 14 O. 7. It is no violation of a charter, which contains a clause prohibiting the exercise of banking powers, to receive money on deposit: *Ib.;* and an insurance company does not forfeit its charter because of non-user, by refusing to insure against extra-hazardous risks: *Ib.*

Neither a neglect to exercise corporate powers, nor even an abuse of them, *ipso facto,* works a forfeiture of the franchise; but the corporation subsists until the forfeiture is ascertained and declared by a competent tribunal, in a judicial proceeding instituted for that purpose by the government: State *v.* Bryce, 7 O. (2 pt.) 82.

As corporate franchises will not be forfeited by non-user without a judicial sentence, so the title to real estate will not be lost by non-user alone: Webb *v.* Moler, 8 O. 548.

Where a corporation has abused or misused its corporate powers, but not in any particular as to which it is declared by statute the act shall operate as a forfeiture of its charter, a court, in a proceeding in quo warranto against the corporation, is vested with a discretion to determine whether the corporation shall be ousted of its franchise to be a corporation, or from the exercise of powers illegally assumed: State *v.* Building Ass'n, 35 O. S. 258.

A corporation may forfeit its charter through neglect or abuse of its franchises; but a forfeiture is not allowed, except under express limitation of the charter, unless a plain abuse or neglect of power by which the corporation fails to fulfill the design of its creation is shown: State *v.* Farmers' College, 32 O. S. 287.

Where a charter for a college was granted, and the object of the corporation, as evinced by legislative acts in regard to the institution, was to create "an institution of learning," in which there should be "a professorship of agriculture," but the general course of instruction was to be controlled by the trustees: Held, that so long as the trustees maintain under the charter an institution of learning, with a professor of agriculture, and other competent instructors for a preparatory and liberal elective course of classical, scientific, and agricultural education, and the general design of the institution is being faithfully accomplished by them, to the best of their ability, the franchise to be a corporation will not be regarded as forfeited to the state, merely because of a partial decay of the agricultural department, caused by students refusing to take that special course of instruction: *Ib.*

CHAPTER X.

TITLE II—DIVISION II—PART SECOND.

LIFE INSURANCE COMPANIES.

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Sec. 3587. [**For what purposes companies may be formed.**] Any number of persons, not less than thirteen, may associate and form a company to make insurance upon the lives of individuals, and every insurance appertaining thereto or connected therewith, on the mutual or stock plan, and grant, purchase, or dispose of annuities. [69 v. 150, § 1.]

While life insurance corporations organized in Ohio to transact business on the mutual plan have no authority to do business on the assessment plan, yet a foreign corporation having such power should be admitted to do business under section 3630c: Ohio ex rel. *v.* Ins. Co., 58 O. S. 1.

See State *v.* Moore, 38 O. S. 7-11.

Sec. 3588. [**Articles of incorporation: what to contain.**] Such persons shall file in the office of the secretary of state articles of incorporation, signed by them, setting forth their intention to form a company for the purposes named in this chapter, which articles shall comprise a copy of the charter they propose to adopt; and the charter shall set forth the name of the company, which shall not be the corporate name or title used to designate any fire, life, marine, or other insurance company already existing under the laws of this state, the place where it is to be located, the kind of business to be undertaken, the manner in which the corporate powers of the company are to be exercised, the number of directors or trustees, who must be stockholders, or members, and which number may be increased, at the will of the stockholders representing a majority of the stock, or of a majority of the members, to any number not exceeding twenty-one, the manner of electing trustees or directors and other officers, a majority of whom shall be citizens of this state, and the time of such election, the manner of filling vacancies, the amount of capital to be employed, and such other particulars as may be necessary to explain and make manifest the objects and purposes of the company, and the manner in which it is to be conducted. [69 v. 150, § 4; 60 v. 75, § 1; 75 v. 557, § 1; S. & S. 217; (S. & S. 219).]

Sec. 3589. [Articles must be approved by the attorney general.] When such articles are filed in the office of the secretary of state, and the name assumed by the company is not so nearly similar to the name of any other company organized in this state as to lead to confusion or uncertainty on the part of the public, the secretary of state shall submit the same to the attorney general for examination, and if found by him to be in accordance with the provisions of this chapter, and not inconsistent with the constitution and laws of the United States and of this state, he shall certify to and deliver the same to the secretary of state, who shall cause the same, with the certificate of the attorney general, to be recorded in a book to be kept for that purpose, and upon application of the signers thereof the secretary of state shall furnish to them a certified copy of such articles and certificate. [69 v. 150, § 5; 75 v. 557, § 1; (S. & S. 219).]

Sec. 3590. [Notice of opening of books of subscription.] When the signers of the articles of incorporation receive from the secretary of state a certified copy thereof, and desire to organize such company, they shall publish their intention in a paper published and having general circulation in the county in which the company is to be organized; and when such publication has been made in such newspaper for six weeks, they may open books to receive subscriptions to the capital stock, keep such books open until the amount required by this chapter is subscribed, distribute the stock among the subscribers, if more than the necessary amount is subscribed, collect the capital, and complete the organization of the company. [69 v. 150, § 6; (S. & S. 219).]

Sec. 3591. [Whole capital must be paid in and invested.] No joint stock company shall be organized under this chapter with a less capital than one hundred thousand dollars, and the whole capital shall, before proceeding to business, be paid in and invested in treasury notes, in stocks or bonds of the United States, in stocks or bonds of the state of Ohio, or of any municipality or county thereof, or in mortgages on unincumbered real estate within the state of Ohio worth double the amount loaned thereon.

[When structures on mortgaged land are to be insured and for how much.] If the amount loaned shall exceed one-half the value of the land mortgaged, exclusive of structures thereon, such structures shall be insured in an authorized fire insurance company in any amount not less than the difference between one-half the value of such land exclusive of structures, and the amount loaned, and the policy assigned to the mortgagee. [70 v. 118, § 7; S. & C. 219; R. S. of 1880; 91 v. 39; 95 v. 38.]

Where a stockholder executed to the company his note and mortgage in payment of his stock subscription, the stock, under the statute, must be regarded as paid in, and the note and mortgage given for money loaned or invested by the company: Insurance Co. *v.* Curtis, 35 O. S. 350.

As to investments by life insurance companies, see Ehrman *v.* Insurance Co., 35 O. S. 324; Insurance Co. *v.* Jones, 35 O. S. 351; and Insurance Co. *v.* Curtis, 35 O. S. 343.

Sec. 3592. [A company may increase its capital stock.] When a company organized under any law of this state requires, in the opinion of the board of directors thereof, a larger amount of capital than that fixed by its articles of incorporation, they shall, if authorized by the holders of two-thirds of the stock, file with the secretary of state a certificate setting forth the amount of such desired increase, and thereafter such company shall be entitled to have the increased amount of capital fixed by the certificate, and the same shall be invested as required by the preceding section. [69 v. 150, § 6.]

Sec. 3593. [Deposit of securities to be made with superintendent.] Any company may invest its capital in the stocks, bonds, or mortgages mentioned in section *thirty-five hundred and ninety-one,* and change and invest the same, or any part thereof in like manner, at pleasure; but no company shall commence business until it has deposited with the superintendent of insurance at least one hundred thousand dollars in the stocks, bonds, and mortgages aforesaid, or one or more of them, duly made or assigned to the superintendent in trust for the purposes mentioned in this chapter; and when any mortgage of real estate is assigned to the superintendent, the assignment shall be immediately entered in the records of the county in which the real estate is situate, the fee for the recording of which shall be paid by the company. [69 v. 150, § 8; (S. & S. 219).]

As to procedure for collecting claims from such funds, see § (281—1) et seq.

Where a deposit of one hundred thousand dollars, in securities, is made by the company, with the superintendent of insurance, as required by the statutes, §§ 3593-3595, Revised Statutes, such securities are held by him as security for policy-holders only, and not for the security of the general creditors of the company: Falkenbach *v.* Patterson, 43 O. S. 359, 360.

Sec. 3594. [Company may change such deposits, and collect interest.] The superintendent of insurance shall hold such securities as security for policy holders in the company; but so long as any company so depositing continues solvent he shall permit it to collect the interest or dividends on its securities so deposited, and from time to time to withdraw such securities, or any part thereof, on depositing with him other securities of the kinds heretofore named, and of equal value with those withdrawn. In case any company making or maintaining such deposit shall, through inadvertence or by reason of not having securities in such denominations as to make the exact sum of one hundred thousand dollars, deposit securities in excess of said requirement, such excess shall be held in trust for the company and not for the benefit of policy holders, and shall be returned to the company making the deposit on its demand. [1904, April 22; 69 v. 150, § 9; (S. & S. 220).]

Sec. 3595. [**When company may commence business.**] When a company is fully organized and has deposited the requisite amount of securities as aforesaid, it shall file with the superintendent of insurance a duly certified copy of its articles of incorporation and approval of the attorney general, and a copy of its by-laws or constitution. If the superintendent shall find that the company is duly organized and that the capital stock of the company has been subscribed, paid in and invested as required by law, he shall, unless he finds the name assumed by the company so nearly similar to the name of another company doing business in this state as to lead to confusion or uncertainty on the part of the public, furnish the company with his certificate of such deposit, and with a license duly reciting that the company has complied with the law and is entitled to transact the business defined in section *thirty-five hundred and ninety-six,* Revised Statutes, which license shall be the authority to commence business and issue policies, and, so long as the company complies with the law, the superintendent shall, annually, upon its application, renew such license. Certified copies of such license may be used in evidence for and against the company in all actions. [1904, April 22; 69 v. 150, § 10; 75 v. 557, § 2; (S. & S. 220).]

Sec. 3596. [**What kind of business such companies may do.**] No company, organized under the laws of this state, shall undertake any business or risk, except as herein provided, and no company, partnership or association, organized or incorporated by act of congress, or under the laws of this or any other state of the United States, or by any foreign government, transacting the business of life insurance in this state, shall be permitted or allowed to take any other kind of risks, except those connected with, or appertaining to making insurance on life or against accidents to persons, or sickness, temporary or permanent physical disability, and granting, purchasing and disposing of annuities; nor shall the business of life insurance, or life and accident insurance, in this state be in any wise conducted or transacted by any company, partnership or association which in this state, or any other state or country, makes insurance on marine, fire, inland, or any other risk, or does a banking or any other kind of business in connection with insurance. [69 v. 150, § 3; 71 v. 12, § 2 (S. & S. 218); R. S. of 1880; 85 v. 119; 93 v. 355.]

An agreement to pay an annuity to a husband and wife "during their natural lives," binds the party to pay the annuity during the joint life of husband and wife, and during the life of the survivor: Douglas *v.* Parsons, 22 O. S. 536.

As to investments by foreign life insurance companies, see Bank *v.* Insurance Co., 41 O. S. 1.

A life insurance company incorporated and organized under the laws of another state and authorized by its charter to engage in the business of "indemnifying employers against loss or damage for personal injury or death resulting from accidents to employes or persons other than employes," may, upon complying with the statutory requirements regulating deposits by foreign corporations, be licensed and permitted, under favor of § 3596, to engage in and transact such employers' liability insurance in this state.

In the absence of any statute in Ohio prohibiting life insurance companies from doing an employers' liability insurance in this state, and the business itself being by statute expressly authorized, a life insurance company incorporated and organized under the laws of a sister state and empowered by its charter to engage in the business of employers' liability insurance, may, by the comity that prevails between the states, be licensed and permitted to transact such business in this state, although our statute has not in express terms conferred upon domestic life insurance companies authority to engage in or transact that particular kind of insurance: State of Ohio ex rel. J. M. Sheets, Attorney-General, *v.* Aetna Life Insurance Co., 69 O. S., Bull. 49, 22.

Health insurance is not life or accident insurance. Therefore prohibited as being "other kind of business." (Ins. Supt. Ruling, 1900.)

Sec. 3597. [**Definitions.**] The word company or companies when used in this act shall mean any corporation or association authorized to do the business of life, accident or health insurance, either on the stock, mutual, stipulated premiums, assessment or fraternal plan.

[**Consolidation and reinsurance.**] No company organized under the laws of this state to do the business of life, accident or health insurance, either on stock, mutual, stipulated premiums, assessment or fraternal plan, shall consolidate with any other company, or reinsure its risks, or any part thereof with any other company, or assume or reinsure the whole of [or] any portion of the risks of any other company, except as hereinafter provided; but nothing herein contained shall prevent any such company from reinsuring a fractional part, not exceeding one-half, of any single risk.

[**Petition to superintendent of insurance.**] When any such company shall propose to consolidate with any other company, or enter into any contract of reinsurance, it shall present its petition to the superintendent of the insurance department of this state, setting forth the terms and conditions of such proposed consolidation or reinsurance, and praying for the approval or of any modification thereof, which the commission hereinafter provided for may approve.

[**Notice to policy holders.**] The superintendent shall thereupon issue an order of notice, requiring notice to be given by mail to the policy holders of such company, of the pendency of such petition, and the time and place at which the same will be heard, and the publication of said order of notice and said petition, in five daily newspapers designated by the superintendent, at least one of which shall be published in the city of Columbus, for at least two weeks before the time appointed for the hearing upon said petition.

[**Commission to hear and determine petition.**] The governor of the state or in event of his inability to act, some competent person resident of the state to be appointed by him, the attorney general of the state, and the superintendent of insurance of the state, shall constitute a commission to hear and determine upon said petition. At the time and place fixed in said notice, or at such time and place as shall be fixed by adjournment, said commission shall proceed with said hearing, and may make such examination into the affairs and

condition of said company as it may deem proper. The superintendent of the insurance department of this state shall have the power to summon and compel the attendance and testimony of witnesses and the production of books and papers before said commission. Any policy holder or stockholder of the above named company or companies may appear before said commission and be heard in reference to said petition. Said commission, if satisfied, that the interests of the policy holders of such company or companies are properly protected, and that no reasonable objection exists thereto, may approve and authorize the proposed consolidation or reinsurance, or of such modification thereof as may seem to it best for the interests of the policy holders, and said commission may make such order with reference to the distribution and disposition of the surplus assets of any such company thereafter remaining, as shall be just and equitable. Such consolidation or reinsurance shall only be approved by the consent of all the members of said commission, and it shall be the duty of said commission to guard the interests of the policy holders of any such company or companies proposing to consolidate or reinsure.

[**Costs.**] All expenses and costs incident to proceedings under this section shall be paid by the company or companies bringing said petition.

[**Penalties.**] Any officer, director or stockholder of any such company or companies violating or consenting to the violation of this section shall be punished by fine of not less than ten thousand dollars, and by imprisonment in a county or city jail for not less than one year. [94 v. 103; 77 v. 267; R. S. of 1880; 69 v. 150, § 2; (S. & S. 218).]

For "an act to authorize insurance companies to reinsure their risks" (81 v. 179), see § (3691—13).

Sec. 3598. [How home companies may invest accumulations.] A company organized under the laws of this state may invest its accumulations as follows, and may sell, change, or reinvest the same, or any part thereof, at pleasure:

1. In United States, state, county, or city bonds, if the market value of the bonds at the date of purchase, is at least eighty per cent. of their par value.

2. In bonds and mortgages upon unincumbered real estate, the market value of which real estate is at least double the amount loaned thereon, at the date of investment.

[**When structures on mortgaged land are to be insured and for how much.**] If the amount loaned shall exceed one-half the value of the land mortgaged, exclusive of structures thereon, such structures shall be insured in an authorized fire insurance company in an amount

not less than the difference between one-half the value of such land, exclusive of structures, and the amount loaned, and the policy assigned to the mortgagee; and the value of such real estate shall be determined by a valuation, made under oath, by two real estate owners, residents of the county where the real estate is located.

3. In loans upon the pledge of such bonds or mortgages, if the current market value of the bonds or mortgages is at least twenty-five per cent. more than the amount loaned thereon.

4. In loans upon its own policies, not exceeding the reserve or present value thereof computed according to the American experience table of mortality, with interest at four per cent., the same being the amount of debts of life insurance companies by reason of their outstanding policies in gross.

This section shall not prohibit any company from accepting any other assets than herein enumerated in payment of debts due the company, in order to protect its interests, or from acquiring real estate for its own use, or by foreclosure in accordance with the laws of the state. [75 v. 576, § 11; (S. & S. 220); R. S. of 1880; 95 v. 39.]

A contract in contravention of subdivision 4 of this section is absolutely void: Hoover *v.* Life Ins. Co., 6 O. D. 432.

Sec. 3599. [**What real estate they may acquire.**] No company organized under the laws of this state shall purchase, hold, or convey real estate, except for the purposes and in the manner herein set forth, to-wit:

1. Such as is requisite for its immediate accommodation in the transaction of its business; or,

2. Such as has been mortgaged to it in good faith, by way of security for loans previously contracted, or for money due; or,

3. Such as has been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or,

4. Such as it has purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts. [69 v. 150, § 12; (S. & S. 220).]

Sec. 3600. [**When real estate must be sold.**] All such real estate acquired as aforesaid, and which is not necessary for the accommodation of a company in the convenient transaction of its business, shall be sold and disposed of within two years after the company acquires title to the same; and the company shall not hold such real estate for a longer period than herein mentioned, unless it procure a certificate from the superintendent of insurance that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the superintendent shall direct in the certificate. [69 v. 150, § 13; (S. & S. 221).]

Sec. 3601. [**Certain actions authorized.**] Actions may be maintained by any company formed under the laws of this state, against any of its members, officers, policy holders, or stockholders, for any cause relating to the business of the company; and actions may be prosecuted and maintained by any member, stockholder, or policy holder, or the heirs or legal representative of either, against the company, for losses which accrue on any risk, if payment be withheld more than two months after the losses become due. [69 v. 150, § 15; (S. & S. 221).]

Sec. 3602. [**When dividends may be paid.**] The directors, managers or officers of any company organized under the laws of this state shall not, directly or indirectly, make or pay any dividend, or pay any interest, bonus, or other allowances in lieu of dividend, to its stockholders, except from the surplus funds, after reserving therefrom an amount sufficient to reinsure all its outstanding risks and policies, estimating the value thereof by the table known as the American experience table, with interest at four per cent. per annum. [69 v. 150, § 16.]

Sec. 3603. [**Home companies must make annual reports to superintendent.**] The president or vice-president, and secretary or actuary, or a majority of the directors, of each company organized under the laws of this state, shall, annually, on the first day of January, or within sixty days thereafter, prepare, under oath, and deposit in the office of the superintendent of insurance, a statement showing the condition of the company on the thirty-first day of December then next preceding, exhibiting the following facts and items, in the following form, to-wit:

1. The number of policies issued during the year.
2. The amount of insurance effected thereby.
3. The amount of premiums received during the year.
4. The amount of interest, and all other receipts, specifying the items.
5. The amount paid to policy holders of the company for losses during the year.
6. The amount of all other expenditures and disbursements of the company, specifying such items as the superintendent may call for.
7. Amount of losses unpaid.
8. Whole number of policies in force.
9. Amount insured thereby.
10. Amount required to reinsure all policies in force, estimating the same by the table known as the American experience table of mortality, with interest at four per cent. per annum.
11. Amount of capital stock, specifying amount paid and unpaid.

12. Amount of dividends unpaid; also amount of all other liabilities.

13. A detailed statement of all the assets of the company, and the manner of their investment.

14. An exhibit of the policy obligations of the company, which shall include, in the first annual statement, a schedule showing the number, date, age, when insured, amount insured, term of policy, and term of premium, of all policies then in force, and in every succeeding annual statement a schedule of the foregoing items as to all policies issued during the year, and a similar schedule as to policies which have ceased to be in force during the year. [70 v. 118, § 17; (S. & S. 221).]

Sec. 3604. [Companies organized by congress or in other state must procure license.] No company organized by act of congress, or under the laws of any other state of the United States, shall transact any business of insurance defined in section *thirty-five hundred and ninety-six*, Revised Statutes, on the capital stock or mutual plan, in this state until it procures from the superintendent of insurance a certificate of authority so to do; nor shall any person or corporation, directly or indirectly act as agent in this state for any such company, either in procuring applications for insurance, taking risks, or in any manner transacting the business of insurance, until such person or corporation procures from the superintendent of insurance a license so to do, in which the superintendent shall state that the company has complied with all the requirements of the laws of this state applicable to such company, and deposits a certified copy of such license in the office of the recorder of the county in which the office or place of business of such agent is established; for which filing such recorder may charge ten cents; nor shall any such company take risks or transact any business of insurance in this state, unless possessed of the amount of actual capital required of similar companies organized in this state under the provisions of this chapter, nor unless the entire capital stock of the company is fully paid up, and invested as required by the laws of the state where organized; but if the company is a mutual company, actual cash assets of the same amount and description, invested and deposited as required by the laws of the state where it was organized, shall be accepted in lieu of capital stock. [1904, April 22; 75 v. 572, § 18; (S. & S. 223).]

A life policy issued by a foreign company is not rendered void by the neglect of the company to comply with the provisions of the act of April 16, 1867 (64 v. 192), providing for the incorporation and regulation of insurance companies; nor will such neglect, in an action brought against the company on the policy, excuse the policy-holder from paying premiums according to the terms of the policy: Insurance Co. *v.* McMillen, 24 O. S. 67.

A company of another state, organized "for insuring lives upon the plan of assessment upon surviving members," without limitation, does not come within the class of companies provided for in § 3630: State *v.* Moore, 38 O. S. 7-9.

What kinds of insurance business fall within the requirements of this section: State *v.* Moore, 39 O. S. 486.

Where a foreign insurance company, tendering compliance with our laws, applies for authority to transact its business within this state, the superintendent of insurance has no power, in the exercise of a mere arbitrary discretion, to refuse such admission: State ex rel. *v.* Moore, 42 O. S. 104.

The license continues in force until April 1, of the year after the date of issue and no longer: State ex rel. *v.* W. U. M. L. Ins. Co., 47 O. S. 167.

License to foreign insurance company merely protects it during its continuance and does not bar ousting the company on quo warranto: State ex rel. *v.* Ins. Co., 49 O. S. 440, 446.

Companies formerly transacting life insurance on assessment or stipulated premium plan, and having outstanding assessment or stipulated premium policies, or both, not entitled to admission under this section to transact full legal reserve business. (Atty. Gen. opinion, April 23, 1902.)

County recorders may charge fee for filing copies of licenses to agents of foreign insurance companies. (Atty. Gen. opinion, March 19, 1902.)

Sec. 3605. [Deposit with superintendent of insurance or other officer.] No such company shall transact any such business of insurance in this state unless at least one hundred thousand dollars of its assets are invested in the interest paying bonds or stocks of the United States, or of this state or of any municipality or county thereof, or the interest paying state bonds or stocks of some other state of the United States, of the market value of one hundred thousand dollars in the city of New York, or in bonds and mortgages on unincumbered real estate in this state, or in the state under the laws of which it was organized, of at least double the value of the amount loaned thereon, and such bonds and mortgages are deposited with the superintendent of insurance of this state or the chief financial or other officer of the state in which such company was organized, designated by the laws of such state to receive the same; and if such bonds and mortgages are deposited with the superintendent of insurance or other officer of another state, the superintendent of insurance of this state shall be furnished with the certificate of such state officer, under his hand and official seal, that he, as such officer, holds in trust and on deposit, for the benefit of the policy holders of such company, the securities above mentioned, giving the items of such securities, and stating that he is satisfied such securities are worth at least one hundred thousand dollars. [1904, April 22; 91 v. 40; 75 v. 572, § 18; (S. & S. 223).]

As to procedure for collecting claims from such funds, see § (281—1) et seq.

Sec. 3606. [Must file copy of charter, and a statement.] Such company shall also file with the superintendent a certified copy of its charter, or deed of settlement, together with a statement, under the oath of the president, vice-president, or other chief officer or manager, and the secretary of such company, stating the name of the company, the place where it is located, and the amount of its capital, with a detailed statement of all the facts required in the annual statement required of companies organized under this chapter, except as to statement required by item fourteen, section *thirty-six hundred and three*, which statement shall be filed by such company only when required by the superintendent of insurance for purposes of actual valuation, as provided by the insurance laws of this state;

also, a copy of its last annual report, if any was made. [75 v. 572, § 18.]

Cited State *v.* Hahn, 50 O. S. 714.

Sec. 3607. [Must also file a waiver.] Any such company desiring to transact any such business in this state by an agent, shall file with the superintendent of insurance a written instrument, duly signed and sealed, authorizing any agent of such company in this state to acknowledge service of process for and in behalf of the company in this state, and consenting that the service of process, mesne or final, upon any such agent, shall be taken and held to be as valid as if served upon the company according to the laws of this or any other state or government, and waiving all claims or right of error by reason of such acknowledgment of service, and that if suit be brought against it after it ceases to do business in this state, and it has no agent in the county in which suit is brought upon whom service of process can be had, as provided in section *thirty-six hundred and seventeen*, service upon it shall be had by the sheriff mailing a copy of the summons or other process, postage prepaid, addressed to it at the place of its principal office located in the state where it was organized, or, if it is a foreign insurance company, to such company at the place of its principal office in the United States, at least thirty days prior to the date of taking judgment in the suit; but the sheriff's return shall show the time and manner of such service. [75 v. 572, § 18.]

The provision by which companies of other states are allowed to transact business in this state only on condition that they become, so far as remedies are sought against them here, subject to the exclusive jurisdiction of the courts of this state, is not in violation of the seventh clause of § 2, Art. III, of the constitution of the United States: Insurance Co. *v.* Best, 23 O. S. 105.

Such companies become, in suits brought against them here, personally amenable to the jurisdiction of the courts of this state, and are to be treated, for purposes of suit, as corporations of this state: *Ib.*

Sec. 3608. [Must file annual statement as to tontine companies.] Every such company doing business in this state shall, annually, file a statement of its condition and affairs in the office of the superintendent of insurance, and in the form and manner required of similar companies organized under the laws of this state; provided, that in such statement no such item as "all other expenditures," or "incidentals," shall be allowed or recognized; but that every item of disbursement or expenditure shall be clearly and distinctly stated and classified when required by the superintendent of insurance, and for the protection of the interests of policy holders in this state, as provided by the laws of this state, and any such company issuing policies on tontine or semi-tontine plan, or which claims to be mutual as to its profits to residents of this state, shall, after the payment of the first premium thereon, and not more than sixty days and not less than ten days prior to the maturity of each and every premium, thereafter

in writing notify every such policy holder, namely the person whose life is insured or the assignee of said policy, if said company has been notified of said assignment, and the address of said assignee given residing in this state, of the time of payment of such premium, and proof of the depositing of said notice to said policy holder or assignee in the post office by said company or its agent, postage prepaid to the last address as given by said policy holder or said assignee to said company shall be conclusive proof of the serving of said notice, and shall set forth fully in said notice the amount of dividend belonging to said policy, when requested by the policy holder if the same be a participating policy, and at the end of the tontine or semi-tontine period of each policy, the company issuing the same shall make a statement to the policy holder of all the dividends and profits accruing to said policy, and from what sources the same has been derived. [88 v. 307; 69 v. 150, § 20; (S. & S. 223).]

Cited State *v.* Hahn, 50 O. S. 714.

Sec. 3609. [Renewal certificates of authority.] If such annual statement be satisfactory evidence to the superintendent of insurance of the solvency and ability of the company to meet all its engagements at maturity, and that the deposit is maintained as above required and provided, he shall issue renewal certificates of authority to the agents of the company, certified copies of which shall be filed in the recorder's office of the county wherein the agency is located, and which renewal certificates shall be the authority of such agents to issue new policies in this state for the ensuing year. [69 v. 150, § 21; (S. & S. 223).]

This section is a regulation imposed for the benefit of policy-holders and others doing business with the foreign company: Insurance Co. *v.* Ellis, 32 O. S. 388.

The section imposes a personal duty on the agent to procure such certificate and file it with the recorder of the county, and a violation of such duty subjects him to a penalty, but his acts as such agent within the scope of his authority are valid and binding, notwithstanding his failure to procure such certificate: *Ib.*

In an action against such agent and his sureties on a bond given for the faithful performance of his duties, to recover money collected by him within the scope of his agency, and which he has failed to account for, his failure to comply with the provisions of said section is no defense in favor of such sureties: *Ib.*

Sec. 3610. [Foreign companies must make deposit, and appoint agent for service.] No person shall act in this state, as agent or otherwise, in receiving or procuring applications for life insurance, nor in any manner aid in transacting the business of any company, partnership, or association incorporated by or organized under the laws of any foreign government, until such company, partnership, or association deposits with the superintendent of insurance, for the benefit of the policy holders of the company, partnership, or association, who are citizens or residents of the United States, securities to the amount of one hundred thousand dollars, of the kind required for similar companies of this state, executes a waiver as provided in section *thirty-six hundred and seven*, and appoints an agent or attorney, in

each county in this state in which the company establishes an agency, on whom process of law can be served, and files with the superintendent of insurance a duly certified copy of its charter, or deed of settlement, and also a duplicate original copy of the letter or power of attorney of such company, partnership, or association, appointing the attorney thereof, which appointment shall continue until another attorney is substituted. [69 v. 150, § 22; (S. & S. 222).]

As to procedure to collect claims from such funds, see § (281—1) et seq.

Sec. 3611. [**Annual and other statement to be filed.**] Such company, partnership, or association shall also file a statement of its condition and affairs in the office of the superintendent of insurance, in the form and manner required for the annual statements of similar companies organized under the laws of this state, and shall, annually, on the first day of January, or within sixty days thereafter, file with the superintendent of insurance a statement of all its affairs, in the manner and form required of similar companies of this state, except as to the requirements of schedule of item fourteen, section *thirty-six hundred and three*, which schedule shall be filed only when required by the superintendent for purposes of actual valuation, as provided by the laws of this state. [69 v. 150, § 24; (S. & S. 224).]

Sec. 3612. [**Supplementary statements.**] Such annual statement shall be accompanied by a supplementary statement, duly verified by the attorney or general agent of the company, partnership, or association in this state, giving a detailed description of the policies issued, and those which have ceased to be in force, during the year, the amount of premiums received, and claims and taxes paid in this state and the United States, for the year ending on the thirty-first day of December; and the supplementary statement shall also contain a description of the investments of the company, partnership, or association in this country, and such other information as may be required by the superintendent of insurance. [69 v. 150, §§ 25, 26; (S. & S. 224).]

Sec. 3613. [**Renewal certificates of authority.**] If the annual statement be satisfactory evidence to the superintendent of the solvency and ability of the company, partnership, or association to meet all its engagements at maturity, he shall issue renewal certificates of authority to the agents of the company, partnership, or association, certified copies of which shall be filed by such agents in the recorder's office of the county where the agency is located, and which renewal certificates shall be the authority of such agents to issue new policies in this state for the ensuing year. [69 v. 150, § 26; (S. & S. 224).]

Sec. 3614. [**Certificates of authority to act as agent.**] No person, company, or corporation shall, directly or indirectly, act as agent for any such company, partnership, or association, either in procuring applications for insurance, taking risks, or in any manner aiding in the transaction of the business of life insurance in this state, until it procures from the superintendent a certificate of authority, which shall be renewable annually, stating that the requirements of this chapter as to such company, partnership or association have been complied with, and setting forth the name of the attorney for such company, partnership, or association a certified copy of which certificate shall be filed in the recorder's office of the county where the agency is to be established, and which shall be the authority of such company, partnership, or association, and its agent, to do business in this state. [69 v. 150, § 27; (S. & S. 223).]

Sec. 3615. [**Penalties for failure to make statements.**] If any company, partnership, or association, organized without this state, neglect or refuse to make such annual statements, all persons acting in this state as its agents, or otherwise, in transacting the business of insurance, shall be subject to the penalties provided by law in case of the failure of an insurance company organized under the laws of this state to make an annual statement. [69 v. 150, § 28; (S. & S. 225).]

Sec. 3616. [**Duration of licenses.**] All licenses granted by the superintendent of insurance in pursuance of this chapter shall continue in force, unless suspended or revoked, until the first day of April next after the date of their issue. [1904, April 22; 69 v. 150, § 19.]

Applied State ex rel. *v.* W. U. M. L. Ins. Co., 47 O. S. 167, 178.

Sec. 3617. [**When foreign companies must appoint agents to receive service.**] If any company, partnership, or association, organized under the laws of any other state or government, cease to do business in this state according to law, it shall appoint, in the manner herein provided for, in every county wherein an agency existed at the date of such discontinuance, one or more agents for the purpose of receiving service of process in all actions upon policies of insurance issued to the citizens of this state while it was lawfully transacting the business of insurance in this state, and service of process upon such agents, in such actions, shall be held to be as valid as actual service upon the company, partnership, or association; and in every case where no such agent is appointed, the agent last designated and acting for the company, partnership, or association shall be deemed and taken to be duly authorized by it to receive service of process as aforesaid; but the officer who serves such process shall

also send a copy of the process served on the agent, by mail, to the address of such company, partnership, or association, at the place of its principal or home office at the time it ceased to do business in this state, and the return of such officer upon such process shall distinctly show that such copy was mailed as aforesaid at least thirty days before any judgment shall be rendered in such action. [69 v. 150, § 19.]

Sec. 3618. [Who are agents to receive service.] If any such company, partnership, or association cease to transact business in this state according to the laws thereof, the agents last designated, or acting as such for it, shall be deemed to continue agents for it, for the purpose of serving process, and for commencing actions upon any policy or liability issued or contracted while it transacted business in this state; and service of such process upon any such agent, for the causes aforesaid, shall be deemed a valid service upon the company, partnership, or association. [69 v. 150, § 23; (S. & S. 223).]

Sec. 3619. [Companies may change securities, and collect interest.] Nothing in this chapter contained shall be construed to prevent the company, partnership, or association from collecting the interest on any securities deposited by it, so long as it continues solvent, and complies with all the provisions of this chapter applicable to it, nor from exchanging them for other securities of equal value, and of the kind hereinbefore named, with the officers having them in trust as aforesaid. [75 v. 572, § 18.]

Corporations are limited to powers conferred by act. Unless restrained, corporations have incidental power to make contracts: Strauss *v.* Eagle Ins. Co., 5 O. S. 59.
If charter authorizes to loan, it may purchase a bill of exchange: White's Bank of Buffalo *v.* Toledo F. & M. Ins. Co. 12 O. S. 601.

Sec. 3620. [Authority to be withdrawn in certain case.] If any company, partnership, or association organized without the limits of this state, and doing business within this state, make an application for a change of venue, or to remove any suit or action to which it is a party, heretofore or hereafter commenced in any court of this state, to the United States district or circuit court, or to any federal court, the superintendent of insurance shall forthwith revoke and recall the license or authority to such company, partnership, or association to do or transact business within this state; and no renewal or authority shall be granted to such company, partnership, or association for three years after such revocation, and it shall thereafter be prohibited from transacting any business in this state until again duly licensed and authorized. [75 v. 572, § 18.]

Sec. 3621. [Policy holders entitled to copies of applications.] Every person holding a policy of insurance issued by any company on the life of any person shall be entitled to be furnished by such

company with a copy of any application or document, either written or printed, or both, held by such company, upon which such policy was issued, or which may affect the validity or [of] the same; and the company, upon demand made for such copy, by the holder of such policy, or by any person upon whose life such policy was so issued, shall make, and forthwith furnish to such person, a certified copy of all such applications or friends' certificates, under the hand of the president, secretary, or other proper officer of the company, and under its seal. [74 v. 181, §§ 1, 3.]

The copies must be delivered to the insured in his lifetime; and if they are not, the defect cannot be cured by delivery to any person interested in the policy: Dickmeier, Admr. *v.* Prudential Ins. Co., 4 N. P. 13; 6 O. D. 161.

Sec. 3622. [Effect of failure to deliver copies.] If such company neglect or fail for thirty days from the time of such demand to furnish to such person a copy of all such papers as are mentioned in the preceding section, and as provided therein, it shall thereafter be forever barred from setting up, by way of defense to any suit on such policy of insurance, any error or incorrectness, or fraud or misrepresentation of the person making the same, or any mistake therein whatever; and such application or other paper or document shall thereafter be taken and held, so far as the same may affect any claim under such policy, or any fund secured thereby, to be in all respects true and correct. [74 v. 181, § 2.]

Sec. 3623. [Copies of applications to accompany policies issued.] Every company doing business in this state shall return with, and as part of any policy issued by it, to any person taking such policy, a full and complete copy of each application or other document held by it which is intended in any manner to affect the force or validity of such policy, and any company which neglects so to do shall, so long as it is in default for such copy, be estopped from denying the truth of any such application or other document; and in case such company neglect, for thirty days after demand made therefor, to furnish such copies, it shall be forever barred from setting up, as a defense to any suit on such policy, any incorrectness or want of truth of such application or other document. [74 v. 181, § 3.]

Where a full and complete copy of the application for insurance has not been returned with the policy, the insurance company while so in default is estopped from denying the truth of such application, but to make such estoppel available the facts constituting the estoppel must be plead by the plaintiff: Metropolitan Life Insurance Co. v. Howle, 68 O. S. 614.

Sec. 3624. [Applications, etc., in cipher void.] No company doing business in this state shall take any application, medical certificate, or other document, for insurance upon the life of any person, in cipher, or by character of any sort other than ordinary written or printed language; and any such application, medical certificate, or other document taken in violation of this section shall be held to be

void and of no effect as against any person claiming under any policy of insurance issued thereon. [74 v. 181, § 4.]

Sec. 3625. [When a false answer is material.] No answer to any interrogatory made by an applicant, in his or her application for a policy, shall bar the right to recover upon any policy issued upon such application, or be used in evidence upon any trial to recover upon such policy, unless it be clearly proved that such answer is willfully false and was fraudulently made, that it is material, and induced the company to issue the policy, and that but for such answer the policy would not have been issued; and, moreover, that the agent or company had no knowledge of the falsity or fraud of such answer. [75 v. 572, § 18.]

Where statements are made in a policy of insurance which are untrue, but are made without fraud, and under a misapprehension of the facts, and the policy, by its terms, is thereby made void, the applicant may recover from the insurance company the premiums paid: Insurance Co. *v.* Pyle, 44 O. S. 20.

These sections can not be evaded by an agreement that the policy shall be regarded as made in the state where the company resides: N. Y. Life Ins. Co. *v.* Bloch, 12 C. C. 224; 2 O. D. 321.

Cited, Dwelling House Ins. Co. *v.* Webster, 7 C. C. 511, 535 (aff'd. 53 O. S. 558).

Is constitutional and does not violate the fourteenth amendment to the constitution of the United States: Ins. Co. *v.* Bloch et al. 12 C. C. 224; 2 O. D. 321; Ins. Co. *v.* Warren, 59 O. S. 45.

The company is liable where the false answers are known to the company's agent, and where the agent and assured by collusion furnished false answers: Ins. Co. *v.* Kilbane, 15 C. C. 62.

Section 3625 Revised Statutes applies to false answer to interrogatories in the application for a life insurance policy, but does not apply to conditions in the policy itself: Metropolitan Life Ins. Co. *v.* Howle, 62 O. S. 204.

To constitute the answer to an interrogatory in an application for a policy of life insurance a defense to a recovery on such policy it must be clearly proved that such answer was wilfully false, and was fraudulently made, that it is material, and induced the company to issue the policy upon it, that but for such answer the policy would not have been issued, and that the agent and company had no knowledge of the falsity or fraud of such answers. (Idem.)

Sec. 3626. [When companies estopped from certain defenses.] All companies, after having received three annual premiums on any policy issued on the life of any person in this state, are estopped from defending, upon any other ground than fraud, against any claim arising upon such policy by reason of any errors, omissions, or misstatements of the assured in any application made by such assured on which the policy was issued, except as to age. [69 v. 150, § 32.]

See Lowe *v.* Insurance Co., 41 O. S. 273.

Cited Dwelling House Ins. Co. *v.* Webster, 7 C. C. 511, 535.

Is constitutional and does not violate the fourteenth amendment to the constitution of the United States: Ins. Co. *v.* Bloch et al., 12 C. C. 224; 2 O. D. 321.

See same case under § 3625.

If a policy of insurance against accident contains a stipulation that the insurer shall not be liable on account of the death of the assured if it results wholly or partly from infirmity or disease, the stipulation is available as a defense notwithstanding sections 3625 and 3626, whose effect is limited to defenses founded on fraud or misstatement in the application: The Aetna Life Insurance Co. *v.* Dorney, an infant, by Turley, his Guardian, 68 O. S. 151.

Sec. 3627. [This chapter applies to companies heretofore organized.] All companies organized under any law of this state shall continue corporations for the purpose for which they were chartered, but subject to all the provisions, requirements, and penalties imposed on companies organized under this chapter, and entitled to all the benefits and privileges of this chapter. [69 v. 150, § 29.]

Sec. 3628. [**Husband may insure for benefit of wife and children.**] Any person may effect an insurance on his life, for any definite period of time, or for the term of his natural life, to inure to the sole benefit of his widow and children, or of either, as he may cause to be appointed and provided in the policy;

[**Insurance exempt from claims of creditor.**] And the sum or net amount of insurance becoming due and payable by the terms of insurance, shall be payable to his widow, or to his children, for their own use, as provided in the policy, exempt from all claims by the representatives and creditors of such person.

[**Premiums paid in fraud inures to creditor.**] Provided, that, subject to the statute of limitations, the amount of any premiums for said insurance paid in fraud of creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy;

[**When company liable to creditor.**] But the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless, before such payments notice shall be given the company by a creditor specifying the amount of his claim and the premiums which he alleges have been so fraudulently paid. [93 v. 130; 45 v. 53, § 1; S. & C. 737.]

When a husband, acting as the agent of his wife, takes out in her name, and for her sole use, a policy of insurance on his life, from a company whose charter makes such policy the exclusive property of the wife, and exempts its proceeds from liability for the husband's debts, the wife is, as to such policy, to be regarded as a *femme sole*: Insurance Co. *v.* Applegate, 7 O. S. 292.

When, in such case, representations in regard to the condition of his health are made by the husband, in his application for the policy, which, by the terms of the policy, are made part thereof, the subsequent declarations of the husband, made pending his unauthorized negotiations for the surrender of the policy, and tending to show the false or fraudulent character of the representations upon which the policy issued, are not competent evidence in a suit brought by the wife upon the policy after the husband's death: *Ib.*

As to the right of the husband, who has separated from his wife, and whose life is insured for her, to act as her agent in receiving notice from the insurance company, and to revoke the policy of insurance: Insurance Co. *v.* Smith, 44 O. S. 156.

This section applies as well to a policy issued by a company organized and conducted outside the limits of Ohio as to a policy issued by a company of this state: Cross *v.* Armstrong, 44 O. S. 614.

Difference between sections 3628 and 3629 explained: Weber *v.* Paxton, 48 O. S. 266.

Each policy must stand alone; they can not be added together: Hinch, Admr. *v.* D'Ubassy et al., 1 O. D. 372.

Life insurance over and above the amount on which $150 would be the annual premium belongs to an insolvent's creditors: Circuit Ct. Edit., 38 W. L. B. 239.

Merely fixes the exemption rights of wife and children and the rights of creditors: *In re* estate Andress, 5 N. P. 252.

Where a husband procures insurance on his life payable to himself after a term of years if he shall live so long and if not, then to his wife at his death, and after paying premiums for some years gives a premium note which has a forfeiture clause therein more onerous, as against the interest of the wife, than the forfeiture clause in the policy, such forfeiture clause in the note will not avail the insurance company as against the wife, unless she assents thereto: Union Central Life Ins. Co. *v.* Buxer, 62 O. S. 385.

When a married woman is named as a beneficiary in a policy of insurance on the life of her husband, she is entitled to the proceeds of the policy, notwithstanding a divorce obtained by her before his death: Overhiser, Admx., *v.* Overhiser et al., 63 O. S. 77.

Sec. 3629. [**Wife may insure life of husband.**] Any married woman, may, by herself, and in her own name, or in the name of any third person, with his assent as her trustee, cause to be insured the life of her husband, for her sole use, for any definite period, or for the term of his natural life, and if she survive such period or term, the amount of insurance becoming due and payable by the

terms of the insurance shall be payable to her, to and for her own use, free from the claims of the representatives of the husband, or any of his creditors; a policy of insurance on the life of any person, duly assigned, transferred, or made payable to any married woman, or to any person in trust for her or for her benefit, whether such transfer is made by her husband or other person, shall inure to her separate use and benefit, and that of her children, independently of her husband or his creditors, or of the person effecting or transferring the same, or his creditors; and the amount of the insurance provided for in the preceding section, or this section, may be made payable, in case of the death of the wife before the period at which it becomes due, to his, her, or their children, for their use, as shall be provided in the policy of insurance, or to their guardian, if under age; but if there are no children upon the death of the wife, such policy shall revert to and become the property of the party whose life is insured, unless it has been transferred as hereinafter provided; and if by its terms, or a transfer thereof, a policy is payable to a married woman solely for her use, she may sell, assign, or surrender the same, but the party whose life is insured shall concur in and become a party to the transfer; but if a policy be procured by any person with intent to defraud his creditors, an amount equal to the premium paid thereon, with interest, shall inure to the benefit of his creditors, subject, however, to the statute of limitations. [69 v. 150, § 30; 45 v. 53, §§ 2, 3; 76 v. 160, § 1; S. & C. 737.]

If the beneficiary die before the person whose life is insured, the policy reverts to the assured and passes as other personalty: Ryan *v.* Rothweiler, 50 O. S. 595, 602; Frank *v.* Bauman (Supr. Ct. not rep.) 35 Bull. 59.

If the face of the policy shows that it was obtained by a wife on her husband's life, she paying the premium, it is prima facie her property: Weber *v.* Paxton, 48 O. S. 266.

Sec. 3630. [Mutual protection associations; powers; accumulations; certificates; by-laws.] A company or association may be organized to transact the business of life or accident or life and accident insurance on the assessment plan, for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families, heirs, executors, administrators, or assigns of the deceased members of such company or association, as the member may direct, in such manner as may be provided in the by-laws, and may receive money either by voluntary donation or contribution, or collect the same by assessments on its members, and may accumulate, invest, distribute and appropriate the same in such manner as it may deem proper; that all accumulations and accretions thereon shall be held and used as the property of the members and in the interest of the members, and shall not be loaned to, used, appropriated, or invested for the benefit of any officer or manager of such company or association; and provided, that no company or

association shall issue a certificate for a greater amount than such company or association shall be able to pay from the proceeds of one assessment; and such company or association shall not be subject to the preceding sections of this chapter. Associations organized under this section (3630) may change or amend their constitution or by-laws by the assent thereto in writing of a majority of the members, or by a majority of those present, in person or by proxy, at a meeting held for that purpose, thirty days' notice of such meeting having been given with the proposed changes in full by the acting president personally or by letter mailed to each member, provided, however, that such change shall not take effect or be in force until the same has been submitted to, and approved by the superintendent of insurance. Such associations may provide in their by-laws that there shall be not less than five nor more than fifteen trustees, whose term of office shall not be more than three years. If the term be made more than one year, the by-laws may provide for electing at the first election a portion of them for one year, a portion of them for two years and a portion of them for three years, and thereafter elections shall be for a term of three years. Such associations by their regulations or by-laws may provide for—

1. The time, place and manner of calling and conducting their meetings.

2. The number of members constituting a quorum.

3. The time of the annual election for trustees and the mode and manner of giving notice thereof.

4. The duties and compensation of officers.

5. The manner of election, or appointment, and tenure of office of all officers; the tenure of the trustees shall not be for more than three years, one-third of whom may be elected annually. The provisions of sections 3251 and 3252 shall not apply to associations organized under section 3630.

6. Provided, however, that nothing herein shall be construed to affect or impair the powers or franchises of corporations, companies or associations heretofore organized under the provisions of original section 3630, or under the said section as heretofore amended; and provided also, that such companies or associations may avail themselves of the provisions of this act by amendment of their articles of incorporation as provided in section 3238*a*. [88 v. 251; 83 v. 161; Rev. Stat. 1880; 72 v. 23, § 3.]

See later law, §§ (3631—11) to (—23).
See also § 3631*a*.
See § 148*a* for incorporation fees.

Such associations are not authorized to provide for the payment of stipulated sums of money to persons other than the family or heirs of a deceased member: State *v.* Mutual Relief Ass'n. 29 O. S. 399.

The by-laws and regulations adopted by an association determine the rights of its members; and a fund raised by the association in pursuance of such by-laws and regulations, to be paid to the family or heirs of a deceased member, in the manner therein specified, "unless otherwise directed by such member in his life-time," will, on failure of the member to give such direction, be controlled by such laws and regulations: Arthur *v.* Odd Fellows' Ben. Ass'n, 29 O. S. 557.

When, by the laws and regulations of the association, the fund is to be paid "to the widow, children, mother, sister, father, or brother of a deceased member, and in the order named, if not otherwise directed by the member previous to his death," the relatives will take the fund in the order named, unless the member, in his lifetime, executed such power of direction or appointment, thus changing the order of payment; and the will of a member, who died seized of real and personal property, devising and bequeathing to his children "my estate and property, real, personal, and mixed," without referring to the power, or the subject of it, is not such an execution of the power as will control the fund: *Ib.*

Associations incorporated for the purposes specified in this section, whether incorporated *before* or *since* the amendment of February 3, 1875, are not subject to the laws of this state relating to life insurance companies: State ex rel. *v.* Mutual Protection Ass'n, 26 O. S. 19.

A company of another state, organized for "insuring lives upon the plan of assessment upon surviving members," without limitation, does not come within the class of companies provided for in this section: State *v.* Moore, 38 O. S. 7.

Corporations organized under this section, though not subject to the provisions of this chapter, relating to life insurance companies on the mutual stock plan, are subject to all the general provisions of Chapter 1, Title 2, which apply to corporations not for profit: State *v.* Standard Life Ass'n, 38 O. S. 281.

The members of such a corporation are those mutually engaged in promoting the purposes of the organization, and who, by virtue of their relation to the corporation, are entitled to the mutual protection and relief provided, or whose family or heirs are, in case of death, entitled to the specific relief provided: *Ib.*

Such members are the controlling body, authorized to elect trustees, make by-laws, etc.: *Ib.*

As to plans of assessment made with a view to profit of trustee; as to what is a contract of insurance, and when void: *Ib.*

See note to State ex rel. *v.* Moore, 39 O. S. 486, under § 3630*e*.

The beneficiary named in each certificate of membership must be an heir or of the family of the deceased member. A certificate naming any other person, or issued to a proper person "and assigns," is unauthorized. The trustees can not appropriate corporate funds for their own compensation for previous years' service, when they had in those years appropriated funds for that purpose. The trustees, as a board, can bind the company; but they are not agents, and cannot bind the company by voting themselves improper and unreasonable compensation: State *v.* People's Mutual Benefit Ass'n., 42 O. S. 579.

No one can be a beneficiary of the insurance provided for in § 3630 of the Revised Statutes, unless he is of the family of the assured, or may, upon his death, become his beir: Mutual Aid Ass'n *v.* Gonser, 43 O. S. 1.

D., a member of a mutual protective association, assigned for a valuable consideration his certificate of membership to a person in no way related to him; said person, in good faith, relying on the assignment, paid all assessments up to the death of D. D. left a widow. The rules of the association provided that the beneficiaries should be widow, children, mother, sister, father, or brother of the deceased member, and in the order named, if not otherwise directed by the member: Held, 1. The assignment by D. was void. 2. A member can not direct the payment to any other person than the beneficiaries named in the rules of the association. 3. The fund being in court, it will be distributed as follows: (*a*) the costs; (*b*) to the assignee of the certificate the assessments paid by him with interest from the time of payment; (*c*) the balance to D.'s widow: Odd Fellows' Ass'n *v.* Diebert, 2 C. C. 462.

P. became a member of a mutual life association, and received a policy, which, on his death, entitled his "heirs" to receive a certain sum from the association. He died, leaving a widow and one child surviving him: Held, that his widow and child were his heirs as to said sum, and took it as tenants in common, and in the proportions fixed by the statute of descent and distribution, when the intestate has died leaving a widow and a child or children: Mutual Life Ass'n *v.* Pollard, 3 C. C. 577. Cox, J. dissented.

Section construed: State ex rel. *v.* W. U. M. L. Ins. Co., 47 O. S. 167.

The power of expulsion from membership and benefits can not be exercised by a committee or subordinate branch, except upon express authority reasonably exercised: State *v.* Fraternal Mystic Circle, 9 C. C. 364; 3 O. D. 9; reversed upon the ground that mandamus is not the remedy for such wrongful expulsion: 38 W. L. B. 300, (nowhere else reported).

Change of beneficiary can only be made in accordance with the mode pointed out by the by-laws of the association: Church *v.* Church, Ex. et rel., 57 O. S. 561.

While life insurance corporations organized in Ohio to transact business on the mutual plan have no authority to do business on the assessment plan, yet such a foreign corporation having such power should be admitted to do business herein under section 3630*e*: Ohio ex rel. *v.* Ins. Co., 58 O. S. 1.

"Life insurance on the assessment plan" held "to contemplate a scheme of insurance conducted for the sole benefit of the policy-holders of a concern, the principal source of revenue of which must arise from post-mortem assessments intended to liquidate specific losses." (Ohio ex rel., etc., *v.* Life Ins. Co., 58 O. S. 1).

Does not authorize health insurance. (Ins. Supt. Ruling, 1900.)

The business of such association must be confined to payment of stipulated sums to members or beneficiaries. The association can not agree to provide nurses, hospitals, physicians, etc. (Ins. Supt. Ruling, 1900).

By-laws and certificates of assessment association must contain clause for extra assessment or for scaling amounts of certificates. (Ins. Supt. Ruling, 1900).

Sec. 3630*a*. [Mutual aid associations annually to file with superintendent of insurance sworn statement of its transactions; what such statements to contain.] That each corporation, company, or association now organized, or that may hereafter be organized, in pursuance of sections *three thousand two hundred and thirty-six* and *three thousand two hundred and thirty-eight* of the act to revise and consolidate the general statutes of Ohio, passed June 20, 1879, or under any other law of this state, for the purpose of doing business under the provisions of section *three thousand six hundred and thirty* of said act, or for the purpose of doing such business as is contemplated by said section, shall, on the first day of January, each year, or within sixty days thereafter, deposit in the office of the superintendent of insurance, a statement, under oath, of all its transactions for the year next preceding said first day of January, and the condition of its business at the close of said year, according to printed blanks, which shall be prepared and furnished by the superintendent of insurance, showing, in detail, the transactions of each company or association, exhibiting the following facts and items, in the following form, to-wit:

1. Number of certificates or policies issued during the year.
2. The amount of the indemnity effected thereby.
3. Number of death losses during the year.
4. Number of death losses paid during the year.
5. Total amount received from death assessments during the year.
6. Total amount paid to certificate-holders or policy-holders for losses during the year.
7. Number of death claims not due, but for which assessments have been made.
8. Number of losses for which assessments have not yet been issued.
9. Number of death claims compromised or resisted during the year, and reasons for such compromise or resistance.
10. Does the association or company charge annual dues?
11. How much are the dues for one thousand dollars ($1,000.00) of indemnity?
12. Does the association or company use the death assessments to meet its expenses, in whole or in part?
13. Amount of death assessments used to meet expenses during the year.
14. Do the certificates or policies issued by association or company guarantee a fixed amount to be paid, regardless of amount realized from assessments made to meet the same?
15. If so, state how the amount is guaranteed.

16. What security for such guarantee?

17. Does the association or company issue endowment certificates or policies, or undertake and promise to pay to members during life any sum of money or thing of value?

18. If so how are these payments or promises provided for?

19. If by reserve, state the amount of reserve.

20. From what source is the reserve fund obtained?

21. How invested?

22. What guarantee or security have the certificate-holders for this reserve?

23. How many classes or divisions of endowment certificates or policies have the association or company?

24. How many years required for maturity of first class or division? How many years required for maturity of second class or division? How many years required for maturity of third class or division? How many years required for maturity of fourth class or division?

25. Number of certificates or policies in force in first class or division. Number of certificates or policies in force in second class or division. Number of certificates or policies in force in third class or division. Number of certificates or policies in force in fourth class or division.

26. Date of organization of association or company.

27. Number of certificates or policies lapsed during the year.

28. Whole number of certificates or policies in force at the beginning and end of the year.

29. The aggregate amount of certificates in force at the beginning of the year.

30. The aggregate amount of certificates lapsed during the year.

31. The aggregate amount of certificates in force at the end of the year.

32. Maximum, minimum, and average age of members received during the year.

33. Has the association or company any agents who have not given bonds?

34. In what State is the association doing business? [1880, April 12; 77 v. 178.]

The act of April 12, 1880 (77 v. 178), does not enlarge the class of companies provided for in § 3630: State *v.* Moore, 38 O. S. 7.
See note to State ex rel. *v.* Moore, 39 O. S. 486, under § 3630*e*.

Sec. 3630*b*. [To make report to superintendent within ninety days.] Within ninety days after the passage of this act, each corporation, company, or association doing business in pursuance of said section *three thousand six hundred and thirty*, shall report, under

oath, to the superintendent of insurance its transactions for the year 1879, on the form required to be furnished in the first section of this act. [1880, April 12: 77 v. 178, 180.]

Sec. 3630*c*. [**Failure to file statement to work forfeiture of franchise; attorney-general to institute proceedings.**] Any such corporation, company, or association which shall fail or refuse to file a statement or report, or whose treasurer fails to file a bond as required by this act, shall forfeit its right to do business, which forfeiture the superintendent of insurance shall enforce by proceedings in quo warranto; and it is hereby made the duty of the attorney general of the state to institute such proceedings, upon his request, in writing. No such corporation, company, or association issuing endowments, certificates or policies, or undertaking, or promising to pay to members during life any sum of money, or thing of value, or certificate, or policy guaranteeing any fixed amount to be paid at death, except such fixed amount or endowments shall be conditioned upon the same being realized from the assessments made on members to meet them, shall be permitted to do business in this state, until they shall comply with the laws regulating regular mutual life insurance companies. [1880, April 12; 77 v. 178, 180.]

Sec. 3630*d*. [**Superintendent of insurance may cause examination to be made.**] The superintendent of insurance may, whenever he has good reason to believe that the business of any such corporation, company, or association is not being legally and honestly conducted, or that such corporation, company or association is exercising powers or franchises not conferred by law, cause an examination of its affairs to be made; and, if upon such examination, it shall appear that such corporation, company or association is exercising powers of franchises contrary to law, the superintendent of insurance shall institute proceedings in quo warranto against the same, in the manner provided in section 3630*c* of the Revised Statutes of Ohio; and the expenses of all examinations of all companies, made under authority of this chapter, shall be paid by the state treasurer on the warrant of the state auditor upon the certificate of the superintendent of insurance; provided that the expenses of any examination, made upon the demand of the company, shall be paid by the company making such demand; and provided further, that, when, by the laws of any other state, district, territory or nation, examinations of companies or associations of this state are required or permitted to be made by the insurance department or other authority of such state, district, territory or nation at the expense of such companies, then the expenses of all examinations, made by the insurance department of this state of companies of such state, dis-

trict, territory or nation, shall be charged to and collected from the companies so examined respectively. [77 v. 178, 180; 95 v. 551.]

Sec. 3630*e*. [**Rules under which foreign associations may do business in this state; certificate; revocation; annual statement; obligations similar to those of other states.**] Any corporation, company, or association organized under the laws of any other state of the United States to transact the business of life or accident or life and accident insurance on the assessment plan, shall, as a condition precedent to transacting business in this state, comply with the following conditions, to-wit: Deposit with the superintendent of insurance (1) a certified copy of its charter or articles of incorporation; (2) a certificate from the insurance commissioner, or superintendent of its own state, showing its authority to do such business; (3) a certificate from said commissioner or superintendent or other like authority of its own state, that corporations, companies or associations of this state engaged in life or accident insurance on the assessment plan as the case may be, are, upon complying with the laws of said state, legally entitled to do business in such state; (4) a statement under oath of its president and secretary or like officers, in the form by the superintendent of insurance required, of its business for the preceding year; (5) a certificate under the oath of its president and secretary, or like officers, that such corporation, company or association is paying, and for the twelve months next preceding has paid the maximum amount named in its policies or certificates; (6) a copy of its policy or certificate, application and by-laws, which must show that the liabilities of the assured or members are not limited to fixed or artificial premiums; (7) evidence satisfactory to said superintendent that such corporation, company or association has accumulated and maintained a fund securely invested in securities permitted by the law of its incorporation, not less in amount than the proceeds of one periodical payment by, or an assessment on all certificates or policy holders thereof, and that such fund is held solely for the benefit of certificate or policy holders and can only be used for the purposes provided in the laws of the state where incorporated; provided, that said fund in the case of accident companies or accident associations shall not be less than five thousand dollars, and need not be more than ten thousand dollars; (8) that such corporation, company or association, except it be an accident insurance corporation, company or association, does not issue certificates or policies upon the life of any person more than sixty-five years of age, or upon any life in which the beneficiary named has not a legal insurable interest; provided, license to do business in this state shall not be delivered to any such corporation, company or association

until it shall have filed with the superintendent of insurance an appointment of an attorney within this state upon whom services of process may be had. The superintendent of insurance shall thereupon issue to such corporation, company or association a certificate of authority to transact its business in the state of Ohio, which said certificate of authority must be renewed annually, and it shall be the duty of the superintendent of insurance to refuse such certificate to any such corporation, company or association, when in his judgment such refusal will best promote the public interest; provided, that all decisions by him made shall be subject to review by courts of competent jurisdiction. And said authority shall be revoked whenever the superintendent of insurance on investigation or examination finds that such corporation, company or association is not paying the maximum amount named in its policies or certificates in full; that said corporation, company or association is transacting business fraudulently or illegally, or that the statement of its condition and affairs required under the provisions of this section are false and fraudulent, or for failure to file the annual statement, or when, upon investigation it appears that the expense of management of such company or association, for the year preceding the year in which such investigation is made, was more than thirty per cent. of its income from premiums, assessments and membership fees; and upon such revocation, the superintendent shall cause notice thereof to be published for four weeks in some newspaper published in the county of Franklin, and no new insurance shall thereafter be written by such corporation, company or association or any of its agents in this state; provided, that it shall be unlawful for any agent of such corporation, company or association to transact business in this sate without being first regularly appointed thereby and being licensed by a certificate of authority issued by the superintendent of insurance. Each such corporation, company or association shall, annually thereafter, and on or before the first day of March, make and file in the office of the superintendent of insurance a statement in the form by said superintendent required of its business for the twelve months next preceding the thirty-first day of December. The fees to be paid by each such corporation, company or association to the superintendent for the authority to such corporation, company or association and its agents under the license granted by him to each corporation, company or association, to transact business in the state of Ohio, shall be as follows: for filing copy of charter or articles of incorporation, twenty-five dollars; for filing each annual statement, twenty dollars; for issuing certificate of authority or license to company or association, one dollar; for issuing license to

each agent, one dollar; for affixing seal and certifying any paper, one dollar. Provided, that any company or association may pay to the superintendent the sum of twenty-five dollars for licenses to its agents for the year, and by so doing shall be entitled without further charge to licenses for as many agents as it may choose to appoint; provided, also, that when any other state or country shall impose any obligations in excess of those imposed by this act upon any such corporation of this state, a like obligation shall be imposed on similar corporations, and their agents, of such state or country doing business in this state; and provided, also, that such corporation, company or association is transacting business in this state shall be subject only to section 3630 of the Revised Statutes and the sections supplementary thereto; and provided further, that such corporation, company or association shall be authorized to transact in this state the business of life or accident or life and accident insurance on the assessment plan, for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families, heirs, executors, administrators or assigns of the deceased members of such corporation, company or association as the members may direct, notwithstanding such corporation, company or association may have been organized on the assessment plan and authorized by the laws governing it to issue policies insuring lives on the plan of assessment upon surviving members without limitation. Whenever any officer or agent of any such corporation, company or association shall fail or neglect to comply with or violate any of the provisions of this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in a county jail for not more than thirty days, or both, at the discretion of the court.

Sec. 3. This act shall take effect and be in force on and after April 1, 1905. [1904, April 22; 88 v. 252; 80 v. 179, 180; 77 v. 178, 181.]

See note to State *v.* Moore, 38 O. S. 7, under § 3630*a*.

Under the provisions of § 3630*e*, of the Revised Statutes, as amended April 18, 1883 (80 v. 180), the insurance commissioner can not be compelled to issue his certificate of authority to do business in this state to a corporation organized under the laws of another state, to insure lives upon the assessment plan, where, by the laws of such other state, Ohio companies organized to do the business contemplated in § 3630, Revised Statutes, are not entitled as of right, to a certificate of authority to do business therein: State ex rel. *v.* Moore, 39 O. S. 486.

Section construed, State *v.* W. U. M. L. Ins. C., 47 O. S. 167.

Change of beneficiary can only be made in accordance with the mode pointed out by the by-laws of the association: Charch *v.* Charch, Ex et al., 57 O. S. 561.

The transaction of life insurance on the assessment plan as used in this section must be determined by the laws of this state: Ohio ex rel. *v.* Ins. Co., 58 O. S. 1.

The term defined: *Id.*

While insurance corporations organized in Ohio to transact business on the mutual plan have no authority to do business on the assessment plan, yet such a foreign corporation having such power should be admitted to do business here under section 3630*e*: Ohio ex rel. *v.* Ins. Co., 58 O. S. 1.

Although sections 3537 to 3596 inclusive, Revised Statutes, under which life insurance companies intended to transact business on the mutual or stock plan are organized, require

such companies to have capital stock and stockholders; and although when thus organized they have no authority to transact business on the assessment plan, the want of such authority is not a consequence of their having capital stock and stockholders, nor of want of power in the legislature to confer it, but results solely from an omission of the legislature to clothe them with such power. *Infra.*

Notwithstanding the want of such authority in an Ohio corporation, created under those sections, yet as the powers of a corporation depend on its charter and the laws of the state where it is organized, if the charter of an insurance company created in another state together with the laws of such state, authorize it to transact business on the assessment plan, it should be admitted under section 3630*e* to transact business on that plan within this state, upon its complying with this section in other respects, although it may have capital stock and stockholders for whose benefit it was created. *Infra.*

However, what constitutes the transaction of the business of life insurance on the assessment plan within the meaning of that term as used in said section 3630*e* should be determined by the laws of this state; and according to those laws that phrase should be held to contemplate a scheme of insurance conducted for the sole benefit of the policy holders of a concern, the principal source of revenue of which must arise from post-mortem assessments intended to liquidate specific losses: (Ohio ex rel. *v.* Ins. Co., 58 O. S. 1.)

See notes of Ins. Supt. rulings under § 3630.

Sec. 3630*f*. [When action against such association may be brought.] An action may be brought against any such corporation, company or association, organized under the laws of Ohio, or against any such foreign corporation, company or association doing business in Ohio, in any county of this state where such cause of action arises, and summons may be issued and service had as provided in Chapters Four and Five, Division Two, Title One, Part Third and Chapter I, Title III, Part Third of the Revised Statutes of Ohio, the provisions of which chapters are hereby made applicable in such cases. [1904, April 21; 1880, April 12: 77 v. 178, 181.]

Sec. 3630*g*. [Mutual protection associations and their agents; how restricted in the issue of policies: penalty; accident companies.] No such corporation, company or association shall issue a certificate or policy to any person, until such person has been first subjected to a thorough medical examination by a regularly educated physician and found to be a good risk, nor to any person above the age of sixty-five years, nor under the age of fifteen years. Any trustee, officer, agent or employe of any such corporation, company or association, who shall knowingly insure or cause or permit to be insured any person without that person's knowledge or consent, or any fictitious person or any person over sixty-five or under fifteen years of age, or any sickly or infirm person, or who shall issue a certificate or policy of insurance for any such corporation, company or association which has not complied with the laws of this state and received from the superintendent of insurance a certificate of such compliance, or who shall knowingly violate any of the provisions of section *thirty-six hundred and thirty*, Revised Statutes, or the sections supplementary thereto, and any physician or other person who shall knowingly aid in or abet in any manner any such trustee, officer, agent or employe in effecting such insurance, or insurance on his own life, shall be fined not more than one thousand dollars, nor less than one hundred dollars, or imprisoned not more than six months, or both. But the provisions of this supplementary section

in respect to the age and medical examination of persons to whom certificates or policies shall issue, shall not apply to such corporations, companies or associations doing a purely accident business. [1885, April 17: 82 v. 138; 80 v. 179.]

Sec. 3630*h*. [**Expenses: how paid.**] The expenses of such corporation, companies or associations shall be met by fixed annual payments, or by assessments made and designated to be for such expenses; but such assessments shall, in no case, be made or become a part of, any assessments to pay a loss by death; and no part of the mortuary fund shall in any case be used to pay expenses. [1883, April 18; 80 v. 179.]

Sec. 3630*i*. [**Against personal injury and loss of life; against expenses and loss of time occasioned by injury or sickness; expenses, how met; expense, loss, and guaranty funds: separation of such funds; notice to persons assessed; bond required only of purely accident companies.**] Companies consisting of five or more citizens of Ohio may be organized under this chapter and section for the special purpose of insuring against accidental personal injury and loss of life, sustained while traveling by railroad, steamboat or other mode of conveyance, and making all and every insurance connected with accidental loss of life and personal injury, sustained by accident of every description whatever; and against expenses and loss of time occasioned by injury or sickness, and on such terms and conditions, and for such periods of time, and confined to such countries and localities, and to such persons as from time to time may be provided in the by-laws of the company; and the expenses of such corporation, companies or associations shall be met by fixed annual payments, payable quarterly or otherwise or by assessments on the members, payable as may be provided in the by-laws; and on either plan there may be included in such payments or assessments, a certain per cent. thereof, to be fixed by the by-laws, which when collected, shall be credited on the books of the company to the expense fund, and the residue thereof shall be so credited to the fund to pay losses and create a reserve or guarantee fund for the payment of losses and liabilities, and said funds shall be kept separate and shall never be interchanged or used for purposes other than those for which they were respectively collected as aforesaid; provided that any funds collected for, but not required for expenses, may be transferred to the fund for payment of losses or the reserve or guarantee fund; provided, that the assessed shall be notified at the time of the collection of each payment the per cent. thereof that is collected to pay expenses, and the per cent. thereof that is collected to pay losses and create a guarantee fund; but nothing herein shall prevent the company from

distributing to certificate holders the surplus in the accident fund and the surplus arising from the reserve on lapsed and cancelled certificates as provided by the by-laws of the company; and provided, that companies organized under the provisions of this section shall, before engaging in business as provided in this section, execute a bond in the sum of one hundred thousand dollars to the state of Ohio, with security to the acceptance and approval of the superintendent of insurance, for the use and benefit of all persons holding policies or certificates in such company, conditioned that such company shall credit upon the books of said company, all moneys received by it under the provisions of this section, keep the funds separate and not use or interchange them for purposes other than those for which they were respectively collected, and that they will apply and pay out said funds to and for the purposes provided for in this section, which bond, when so executed and approved, shall be deposited with and held by the superintendent of insurance. Provided further, that any corporation, company or association, organized for the purpose of doing a purely accident insurance business, and which corporation, company or association, creates a reserve or guarantee fund from the premiums collected by assessments or otherwise, as provided in the by-laws of the corporation, company or association, shall not be subject to the preceding part of this section, relating to the deposit of a bond in the sum of one hundred thousand dollars; but the treasurer of all such corporations, companies or associations shall, before commencing business, deposit with the superintendent of insurance a bond with approved securities, to the acceptance of said superintendent in the sum of ten thousand dollars, for the use and purposes provided in the preceding portion of this section; and every such corporation, company or association shall invest, as provided in section 3598 of the Revised Statutes of Ohio, so much of the reserve or guarantee fund, in excess of ten thousand dollars, as shall equal at least two and one-half per cent. of all premiums or assessments collected from policies or certificates in force, on the last day of June and December of each year, until said reserve or guarantee fund shall be equal to two dollars for every five thousand dollars of insurance in force; securities for said reserve, as herein provided, shall be deposited with the superintendent of insurance on the last day of June and December of each year, or within thirty days thereafter, to be held by said superintendent for the benefit and protection of policy or certificate holders. Provided, that if such corporation, company or association shall at any time cause all of its unexpired policies or certificates to be paid, cancelled or reinsured, and all its liabilities under such policies or certificates thereby to be ex-

tinguished, or to be assumed by some other responsible company authorized to do business in this state, the superintendent of insurance shall on application of such company, verified by the oath of its president or secretary, and on being satisfied by an examination of its books and of its officers, under oath, that all of its policies or certificates are so paid, cancelled, extinguished or reinsured, deliver up to it such security. Any corporation, company or association, or officer thereof, violating any of the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail where said officer resides for not less than thirty days nor more than one year, or both, at the discretion of the court. Every such association, shall, annually, before March first, file with the superintendent of insurance a statement under oath of its officers showing its transactions for the year ending on the thirty-first day of December preceding, and its condition on that day, in the form prescribed by the superintendent. [1904, April 26; 91 v. 332; 84 v. 130.]

Funeral or death benefits held to be life insurance and not permissible under this section: Ins. Supt. Ruling, 1900.

The business of such association must be confined to payment of stipulated sums to members or beneficiaries. The association can not agree to provide nurses, physicians, hospitals, etc.: Ins. Supt. Ruling, 1900.

Funeral or death benefits held to be life insurance and not permissible under this section: Ins. Supt. Rulin, 1900.

Sec. 3630*j*. [Foreign companies insuring against accidental injury or death, etc.; on what terms may be admitted to do business in state.] Companies and associations organized under the laws of the United States and of other states, territories and nations, and doing the business of insuring against accidental personal injury and loss of life, sustained while traveling by railroad, steamboat or other mode of conveyance, and making all and every insurance connected with accidental loss of life and personal injury, sustained by accident of every description whatever, and against expenses and loss of time occasioned by injury or sickness, and on such terms and conditions and for such periods of time, and confined to such countries and localities, and to such persons as from time to time may be provided in the by-laws of the company; and when payment and the expenses of such corporations, companies or associations, are met by fixed annual payments, payable quarterly or otherwise, or by assessments on the members, payable as may be provided in the by-laws, or as provided in section 3630*j* of the Revised Statutes of Ohio, shall be admitted to do and transact such business in the state of Ohio, but shall, as a condition precedent to transacting business in this state comply with the following conditions, to-wit: Deposit with the superintendent of insurance (1) a certified copy of its charter or articles

of incorporation; (2) a certificate from the insurance commissioner or superintendent of its own state, showing its authority to do such business; (3) a certificate from said commissioner or superintendent or other like authority of its own state that corporations, companies or associations of this state engaged in the same or similar business, or engaged in the business of paying benefits in the case of sickness and disability to be derived from assessments collected from the members, are, upon complying with the laws of said state, legally entitled to do business in such state; (4) a statement under the oath of its president and secretary or like officers, in the form by the superintendent of insurance required of its business for the preceding year; (5) a certificate under the oath of its president and secretary or like officers, that such corporation, company or association is paying and for the twelve months next preceding has paid the maximum amount named in its policies or certificates; (6) a copy of its policy or certificate, application and by-laws, which must show that the liabilities of the assured or members are not limited to fixed or artificial premiums; (7) evidence satisfactory to said superintendent that such corporation, company or association has accumulated and maintained a fund, securely invested in securities permitted by the laws of its incorporation, not less in amount than the proceeds of one periodical payment by, or an assessment on all certificate or policy holders thereof, and that such fund is held solely for the benefit of certificate or policy holders and can only be used for the purposes provided in the laws of the state where incorporated; provided, that said fund shall not be less than five thousand dollars and need not be more than ten thousand dollars; provided, the license to do business in this state shall not be delivered to any such corporation, company or association until it shall have filed with the superintendent of insurance an appointment of attorney in this state upon whom service of process may be had. The superintendent of insurance shall thereupon issue to such corporation, company or association a certificate of authority to transact its business in the state of Ohio, which said certificate of authority must be renewed annually, and it shall be the duty of the superintendent of insurance to refuse or revoke such certificate to any such corporation, company or association, when in his judgment such refusal will best promote the public interest; and when upon investigation it appears that the expense of management of such company or association, for the year preceding the year in which such investigation is made, was more than thirty per cent. of its income from premiums, assessments and membership fees, the superintendent shall refuse or revoke such certificate; provided, that all decisions by him made shall be subject to review by courts of com-

petent jurisdiction. Every such association shall, annually, before March first, file with the superintendent of insurance a statement under the oath of its officers showing its transactions for the year ending on the preceding thirty-first day of December, and its condition on that day, in the form prescribed by the superintendent. The provisions of section *thirty-six hundred and thirty-f* shall apply to such company or association.

Sec. 3. This act shall take effect and be in force on and after April 1st, 1905. [1904, April 22; 95 v. 520, May 10, 1902.]

Sec. 3631. [No agent to collect dues without giving bond; bond of treasurer of association.] No agent or officer of any such corporation, company or association shall be permitted to collect or receive any dues, assessments, or donations for or on account of the same, until he executes jointly, with two responsible sureties, a bond to the corporation, company, or association, to the approval of the trustees thereof, in such sum as they shall prescribe, conditioned for the payment of all such dues, assessments, and donations over to the proper officer of the company; and all receipts of any such company or association shall be paid into the hands of the treasurer thereof, who shall, before assuming the duties of his office, give bond in the sum of not less than ten thousand nor more than fifty thousand dollars, as the said superintendent may determine, with not less than three sureties to be approved by the superintendent of insurance, and conditioned for the faithful accounting for, and proper payment and disbursement to the legitimate purposes of the company or association of all the money thereof, which comes into his hands. Said bond of the treasurer shall be examined, as to its sufficiency, annually, and shall be renewed whenever the superintendent of insurance shall require, and, with the approval of the superintendent of insurance indorsed thereon, shall be filed with the secretary of state. [1880, April 12: 77 v. 178, 181; 72 v. 23, § 4.]

Sec. 3631*a*. [Mutual benefit, etc., societies excepted.] The provisions of sections 3630*a* to section 3631 inclusive, shall not apply to any association of religious or secret societies, or to any class of mechanics, express, telegraph or railroad employes, or ex-union soldiers formed for the mutual benefit of the members thereof and their families or blood relatives exclusively or for purely charitable purposes; nor shall such sections, nor any other laws relating to insurance companies, apply to any association formed for the exclusive purpose of providing for the payment of the funeral expenses of the members of such associations by assessments upon such members when the amount of such payment on account of any one member does not exceed the sum of one hundred dollars, and when the mem-

bership of such associations is limited to the county in which such association is organized;

[**When association becomes subject to insurance laws.**] and provided, that any such association or class which may desire to become subject to the provisions of sections 3630*a*, 3630*c* and 3630*d* of the Revised Statutes of Ohio, may file with the superintendent of insurance notice in writing of such desire, signed by the president of such association or class, and attested by the secretary thereof; and thereupon, such association or class shall become subject to all the terms and provisions of said sections 3630*a*, 3630*c* and 3630*d* of said Revised Statutes; the superintendent of insurance shall thereupon immediately provide such an association or class with proper blanks for furnishing the statement of the condition of such association or class, as provided in said section 3630*a*, and such association or class shall make such report within sixty days thereafter, and thenceforward, annually, as in case of other insurance companies, which report shall be included by said superintendent of insurance in his annual tabulated report, in the same manner as the reports of other companies and subject to the fees prescribed in section 282 of the Revised Statutes of Ohio;

[**Bond of treasurer.**] provided further, that the treasurer of any association or class which shall avail itself of the benefits of this enactment shall be required to give bond in the same manner as provided in section 3631, Revised Statutes of Ohio; said bond to be conditional, approved and renewed, as provided in said section. [1904, March 31; 94 v. 354; 87 v. 170; 86 v. 89; 77 v. 178, § 8.]

An association established by a railway company, composed of some or all of its employes, and the company, for the purpose of accumulating and maintaining a relief fund created by voluntary contributions, not engaged in insurance business: The State of Ohio ex rel. Sheets, Attorney General, *v.* The P. C. C. & St. L. R. R. Co., 68 O. S. 9.

(3631—1) **Sec. 1.** [**Insurance companies forbidden to discriminate against persons of African descent in premiums.**] No life insurance company now organized or doing business, or that may hereafter be organized and do business within this state, shall make any distinction or discrimination between white persons and colored, wholly or partially of African descent, as to premiums or rates charged for policies upon the lives of such persons; nor shall any such company demand or require greater premiums from such colored persons than are at that time required by such company from white persons of the same age, sex, general condition of health and hope of longevity; nor shall any such company make or require any rebate, diminution or discount upon the sum to be paid on such policy in case of the death of such colored person insured, nor insert in the policy any condition, nor make any stipulation whereby such person insured shall bind himself or his heirs, executors, administrators and assigns

to accept any sum less than the full value or amount of such policy in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed upon white persons in similar cases; and any such stipulation or condition so made or inserted shall be void. [1889, March 28: 86 v. 163.]

(3631—2) Sec. 2. [**What shall be done when application of persons of color is refused.**] Any such company which shall refuse the application of any such colored person for insurance upon such person's life, shall furnish such person with the certificate of some regular examining physician of such company who has made examination of such person, stating that such person's application has been refused, not because such person is a person of color, but solely upon such grounds of the general health and hope of longevity of such person as would be applicable to white persons of the same age and sex. [1889, March 28; 86 v. 163, 164.]

(3631—3) Sec. 3. [**Penalty for violating this act.**] Any corporation, or the officer or agent of any corporation, violating any of the provisions of this act, either by demanding or receiving from such colored person such different or greater premium, or by allowing any discount or rebate upon the premiums paid or to be paid by white persons of the same age, sex, general condition of health and hope of longevity, or by making or requiring any rebate, diminution or discount upon the sum to be paid upon a policy in case of the death of such colored person insured, or by failing to furnish the certificate required by section second, shall for each offense be fined not less than one hundred nor more than two hundred dollars. But nothing in this act shall be so construed as to require any agent or company to take or receive the application for insurance of any person. [1889, March 28; 86 v. 163, 164.]

For "an act to protect all citizens in their civil and legal rights," see § (4426—1) et seq.

(3631—4) Sec. 1. [**Premiums for life or endowment insurance; unlawful to discriminate.**] No life insurance company doing business in Ohio, shall make or permit any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life in the amount or payment of premiums, or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract it makes; nor shall any such company, or any agent thereof, make any contract of insurance, or agreement as to such contract, other than is plainly expressed in the policy issued thereon; nor shall any such company or agent pay or allow, or offer to pay or allow, as inducement to insurance, any rebate of

premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy contract of insurance. [90 v. 345; 86 v. 220.]

(3631—5) Sec. 2. [**Penalty for violation by corporation of provisions of this act.**] Every corporation which shall violate any of the provisions of this act shall be fined in any sum not less than one hundred dollars nor exceeding five hundred dollars, to be recovered by action in the name of the state, and the amount so recovered shall be paid into the county treasury for the benefit of the common school fund. [90 v. 345; 86 v. 220.]

(3631—6) Sec. 3. [**Violation by officer or agent of corporation.**] Every officer or agent of any such corporation who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor exceeding five hundred dollars, or imprisonment in the jail of the county not exceeding thirty days, or both, at the discretion of the court, and shall pay the costs of prosecution. [90 v. 345.]

(3631—7) Sec. 4. [**Revocation of license for violation.**] It shall be the duty of the superintendent of insurance, upon being satisfied that any such corporation, or any agent thereof, has violated any of the provisions of this act, to revoke the license of the company, or agent, so offending, and no license shall be granted to such company, or agent, for one year after such revocation. [90 v. 345.]

It is within the discretion of the superintendent of insurance to refuse a license as agent of a foreign life insurance company to one who, in violation of the statute, has, without first obtaining such license, solicited applications for insurance in such company, and, as a part of such solicitation, has offered a rebate of a portion of the regular premium: Vorys, Superintendent of Insurance of Ohio, *v.* The State ex rel. Connell, 67 O. S. 15.

(3631—8) Sec. 1. [**Certain incorporated companies may purchase and own stock in other companies.**] Whenever any incorporated company organized under the laws of the state of Ohio, and having a capital stock including corporations organized as provided in section *thirty-eight hundred and sixty -eight*, Revised Statutes, and the acts amendatory and supplementary thereto, is organized for the purpose of erecting and maintaining a building, any portion of which is intended for or to be occupied by two or more incorporated companies not having a capital stock, including religious, scientific, and beneficial associations heretofore incorporated under the provisions of sections *sixty-six* to *seventy* of "an act to provide for the creation and regulation of incorporated companies in the state of Ohio," passed May 1, 1852, and the several acts supplementary and amendatory thereto, as a lodge-room, chapel, or regular place of meeting for their members, the said incorporated companies, societies or

benevolent associations may each subscribe for, purchase or become the owner or owners, by donation or otherwise, of the whole or any portion of the capital stock of said incorporated company organized for the purpose of erecting and maintaining such building aforesaid. [80 v. 177.]

(3631—9) Sec. 2. [**To be liable in corporate capacity same as individuals.**] That each of said incorporated companies, societies and associations shall be liable in its corporate capacity for and on their respective shares of said capital stock so subscribed, purchased, and owned by it the same as if the same were held and owned by an individual. [80 v. 177.]

(3631—10) Sec. 3. [**Directors; when and how elected.**] That whenever two or more of such incorporated companies, societies, or benevolent associations shall subscribe, purchase or own all the capital stock of said incorporated company organized for the purpose of erecting and maintaining such building, each of said incorporated companies, societies or benevolent associations, shall elect three members of its company, society or association to act as directors of said incorporated company as soon as all the stock is subscribed and ten per cent. is paid, and shall thereafter at its first stated meeting in January of each year, elect three such directors. That the directors so elected and their successors in office shall comprise the board of directors of said incorporated company, and have all the powers conferred by law on the directors of incorporated companies having a capital stock, and said directors need not be the owners or holders of any of the capital stock of said corporation. [80 v. 177.]

Sections 3631-11 to 3631-23 (act of 1896 regulating fraternal beneficiary associations) repealed by act of April 26, 1904, regulating fraternal beneficiary associations. (See below).

Sections 3631-24 to 3631-38, regulating insurance on stipulated premium plan, repealed by act of April 22, 1904, except that the repeal does not apply to existing companies, which continue to be regulated by sections 3631-24 to 3631-38. (See appendix).

AN ACT

Regulating Fraternal Beneficiary Associations and repealing the act of the General Assembly of the State of Ohio entitled "An act regulating Fraternal Beneficiary societies, orders and associations," passed April 27th, 1896, (Sections 3631-11 to 3631-23 inclusive) and the act entitled "An act to amend Section 3631-13 of the Revised Statutes of Ohio," passed May 12th, 1902.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 1. [**Fraternal Beneficiary Associations defined.**] Any corporation, society, order or voluntary association without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government and which shall make provision for the payment of death benefits, is hereby declared to be a Fraternal Beneficiary Association.

Sec. 2. [**Lodge system defined.**] Any association having a supreme governing or legislative body and subordinate lodges or branches by whatever name known into which members shall be elected and initiated or admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required to hold regular or stated meetings at least once in each month, shall be deemed to be operating under the lodge system.

Sec. 3. [**Representative form of government defined.**] Any association shall be deemed to have a representative form of government, when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws, provided that the elective representatives shall constitute a majority in number and have not less than a majority of the votes, nor less than the votes required to amend its constitution and laws, and provided further that the meetings of the supreme or governing body and the election of officers shall be held as often as once in four years.

Sec. 4. [**Exceptions.**] Except as herein provided, such association shall be governed by this act and shall be exempt from all provisions of the insurance laws of this State not only in governmental relations with the state, but for every other purpose and no law hereafter passed shall apply to them, unless they be expressly designated therein.

Sec. 5. [**Benefits.**] Every association transacting business under this act shall provide for the payment of death benefits and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age, provided, the period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years.

Sec. 6. [**Beneficiaries.**] The payment of death benefits shall be confined to the family, heirs, relatives by blood, marriage or legal adoption, affianced husband or affianced wife, or to a person or persons dependent on the member.

Sec. 7. [**What persons admitted.**] No association shall admit to beneficial membership any person less than sixteen (16) nor more than sixty (60) years of age, nor any person who has not been examined by a competent physician and whose examination has not been supervised and approved as provided by the laws of the association.

Sec. 8. [**Certificate.**] Every certificate issued by any association shall specify the maximum amount of benefit provided thereby, and the conditions governing the payment thereof, and shall provide that the certificate, the charter or articles of association, the constitution and laws of the association and the application for membership and medical examination,

signed by the applicant shall constitute the contract between the association and the member and copies of the same certified by the secretary of the association or corresponding officer shall be received in evidence of the terms and conditions of the contract; and any changes, additions or amendments to said charter or articles of association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate shall bind the member and his beneficiaries and shall govern and control the contract in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

Sec. 9. [Funds.] Any association may create, maintain, disburse and apply a reserve, emergency or surplus fund in accordance with its constitution and laws not inconsistent with the provisions of this act. Unless otherwise provided in the contract, any such funds shall be held, invested and disbursed for the use and benefit of the association, and no member or beneficiary shall have or acquire any individual rights therein, or be entitled to an apportionment or the surrender of any part thereof. The funds from which benefits shall be paid and the funds from which the expenses of the association shall be defrayed, shall be derived from periodical or other payments by the members of the association and accretions of said funds; and every contract hereafter made between such association and its members shall provide that if such regular payments are insufficient to pay all matured death and disability claims in full and to provide for the creation and maintenance of the funds required by its constitution and laws, extra assessments may be levied upon the members to meet such deficiency.

Sec. 10. [Investment of funds.] In investing its funds, a domestic association transacting business under this act shall be governed by paragraph one, two and three of section 3598 and sections 3599 and 3600 of the Revised Statutes.

Sec. 11. [Distribution of funds.] Every provision for payment by members of such an association, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes and no part of the reserve, emergency or surplus funds or the net accretions of either or any of said funds shall be used for expenses.

Sec. 12. [Organization.] Seven or more persons, citizens of the United States, and a majority of whom are citizens of this State, who desire to form a Fraternal Beneficiary Association, as defined by this act, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of association in which shall be stated:

1st. The proposed corporate name of the association, which shall not so closely resemble the name of any association or insurance company already transacting business in this state as to mislead the public or lead to confusion.

2nd. The purpose for which it is formed,—which shall not include more liberal powers than are granted by this act, provided that any lawful social, intellectual, educational, moral or religious advantages may be set forth among the purposes of the association,—and the mode in which its corporate powers are to be exercised.

3rd. The names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control and management of the affairs and funds of the association for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body.

Such articles of association and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and literature to be issued by such association, and a bond in the sum of five thousand dollars with sureties approved by the Superintendent of Insurance, conditioned upon the return of the advance payments, as provided in this Section, to applicants, if the organization is not completed within one year, shall be filed with the Superintendent of Insurance, who may require such further information as he deems necessary, and if the purposes of the association conform to the requirements of this act and all provisions of law have been complied with, the Superintendent of Insurance shall so certify and retain and record the articles of association in a book kept for that purpose and furnish the incorporators a preliminary certificate authorizing said association to solicit members as hereinafter provided.

Upon receipt of said certificate from the Superintendent of Insurance said association may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one death benefit assessment or payment, in accordance with its tables of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. But no such association shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians and certificates of such examinations have been duly filed and approved by the chief med-

ical examiner of such association, nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated, nor until there has been submitted to the Superintendent of Insurance, under oath of the president and secretary or corresponding officers of such association a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of regular payments or assessments, which shall not be lower for death benefits than those required by the National Fraternal Congress table of mortality, with interest at four per cent. per annum; nor until it shall be shown to the Superintendent of Insurance by the sworn statement of the treasurer or corresponding officer of such association that at least five hundred applicants have each paid in cash at least one regular monthly payment or assessment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars, all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

Said advanced payments shall during the period of organization be held in trust for and, if the organization is not completed within one year as hereinafter provided, returned to said applicants.

The Superintendent of Insurance may make such examination and require such further information as he deems advisable and upon presentation of satisfactory evidence that the association has complied with all the provisions of law he shall issue to such association a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such association at the date of such certificate. The Superintendent of Insurance shall cause a record of such certificate to be made and a certified copy of such a record may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provisions of this Section shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the Superintendent of Insurance, upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided, and the articles of association and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such association shall have completed its organization and commenced business as herein provided. When any domestic association shall have discontinued business for the period of one year, its charter shall become null and void.

Sec. 13. [**Powers retained—Reincorporation—Amendments.**] Any association now engaged in transacting business in this state, may exercise, after the passage of this act, all of the rights conferred thereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of association not inconsistent with this act, or it may be re-incorporated hereunder. But no association already organized shall be required to re-incorporate hereunder, nor shall it be required to adopt the rates prescribed herein for new associations, in order to avail itself of the privileges of this act, and any such association may amend its articles of association from time to time in the manner provided therein, or in its constitution or laws, and all such amendments shall be filed with the Superintendent of Insurance and shall become operative upon such filing unless a later time be provided in such amendments, or in its articles of association, constitution or laws.

Sec. 14. [**Transfer of membership.**] No domestic association shall transfer its membership or funds to any association not authorized by the Superintendent of Insurance to transact business in this State; nor shall any such association transfer its membership or funds to any licensed association, unless the said contract of transfer has been approved by a two-thirds vote of the members of the Supreme Body of the association whose membership is proposed to be transferred; and by a two-thirds vote of the trustees or board having charge of the association proposing to take such membership.

Sec. 15. [**Remedies.**] No member of any association organized or operating under the provisions of this act, or his beneficiary, or his legal representatives, or any other person in any way interested in any of his benefits, or any person deriving legal rights from him, shall commence any action or other legal proceedings in any of the courts of this State, on account of his contract of insurance, against the supreme or governing body of such association, until after he shall have exhausted all the remedies provided in the constitution and laws of such association by appeals and otherwise, that can be determined within one year after the filing of proof of death or disability.

Sec. 16. [**Annual license.**] Associations which are now authorized to transact business in this State may continue such business until the first day of April next succeeding the passage of this act, and the authority of such associations may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding April. For each such license or renewal, the association shall pay the Superintendent of Insurance twenty-five dollars. A duly certified copy of such license shall be prima facie evidence that the licensee is a Fraternal Beneficiary Association within the meaning of this act.

Sec. 17. [**Admission of foreign associations.**] No foreign association now transacting business, organized prior to the passage of this act, which is not now authorized to transact business in this State, shall transact any business therein without a license from the Superintendent of Insurance. Any such association shall be entitled to a license to transact business within this State upon filing with the Superintendent a duly certified copy of its charter or articles of association; a copy of its constitution or laws, certified by its secretary or corresponding officer, a power of attorney to the Superintendent as hereinafter provided; a statement, under oath, of its president and secretary or corresponding officer, in the form required by the Superintendent, duly verified by an examination made by the supervising insurance official of its home State of its business for the preceding year; a certificate from the proper official in its home State, province or country, that the association is legally organized; a copy of its contract, which must show that benefits are provided for by assessments upon, or other payments by, persons holding similar contracts and upon furnishing the Superintendent such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the State, territory, district, province or country where it is organized, he shall issue a license to such association to do business in this State until the first day of the succeeding April, and such license shall, upon compliance with the provisions of this act, be renewed annually, but in all cases to terminate on the first day of the succeeding April. Nothing contained in this act shall in any manner be so construed as to require any such foreign association, not now authorized to transact business in this State to conform its rates of assessment to those prescribed by the National Fraternal Congress mortality table as a condition precedent to the securing of such license or any renewal thereof. Any foreign association hereafter organized, desiring admission to this State, shall in addition to the foregoing requirements of this Section, show that it collects from all of its members for death benefits, assessments not lower than those required by the National Fraternal Congress mortality table, with interest at four per cent., and shall have the further qualifications required of domestic associations organized under this act and have its assets invested as required by the laws of the State, territory, district, country or province where it is organized. For each such license or renewal, the association shall pay the Superintendent twenty-five dollars. When the Superintendent refuses to license any association, or revokes its authority to do business in this State, he shall reduce his ruling, order or decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers

of the association, upon request, and the action of the Superintendent shall be reviewable by proper proceedings in any court of competent jurisdiction within this State; provided, however, that nothing contained in this or the preceding section shall be taken or construed as preventing any such association from continuing in good faith all contracts made in this State during the time such association was legally authorized to transact business therein.

Sec. 18. [Power of attorney and service of process.] Every foreign association now transacting business in this State shall within thirty days after the passage of this act and every such association hereafter applying for admission, shall before being licensed, appoint in writing the Superintendent of Insurance and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served and in such writing shall agree that any lawful process against it, which is served upon such attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this State.

Copies of such appointment, certified by said Superintendent of Insurance, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service may only be made upon such attorney, must be made in duplicate and shall be deemed sufficient service upon such association; provided, however, that no such service shall be valid or binding against any such association when it is required thereunder to file its answer, pleading or defense in less than thirty days after the date of such service. When legal process against any such association is served upon said Superintendent of Insurance, he shall forthwith forward by registered mail one of the duplicate copies, prepaid and directed to its secretary or corresponding officer. The plaintiff in such process so served shall pay to the Superintendent of Insurance for the use of the State at the time of such service a fee of two dollars, which shall be recovered by him as part of the taxable costs, if he prevails in the suit.

Sec. 19. [Place of meeting—Location of office.] Any domestic association may provide that the meetings of its legislative or governing body may be held in any State, district, province or territory wherein such association has subordinate branches, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State. But its principal office shall be located in this State.

Sec. 20. [No personal liability.] Officers and members of the supreme, grand, or any subordinate body of any such incorporated association shall not be individually liable for the payment of any disability or

death benefit, provided for in the laws and contracts of such association, but the same shall be payable only out of the funds of such association and in the manner provided by its laws.

Sec. 21. [**Waiver of the provisions of the laws.**] The constitution and laws of the association may provide that no subordinate body, nor any of its officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the association, and the same shall be binding on the association and each and every member thereof.

Sec. 22. [**Separate jurisdiction provisions.**] All grand lodges by whatever name known, whether incorporated or not, holding charters from a supreme governing body, which are conducting business in this State upon the passage of this act as a Fraternal Beneficiary association upon what is known as the separate jurisdiction plan, shall be treated as a federation of grand lodges and not as single state organizations, and all reports required by the provisions of this act shall be made and furnished by the officers of such supreme governing body and shall embrace and contain the transactions, liabilities and assets of the entire order.

Sec. 23. [**Constitution and laws—Amendments.**] Every association transacting business under this act shall file with the Superintendent of Insurance a duly certified copy of all amendments of, or additions to, its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws and of additions or amendments thereto, certified by the secretary or corresponding officer of the association shall be prima facie evidence of the legal adoption thereof.

Sec. 24. [**Annual reports.**] Every association, transacting business in this State, shall annually on or before the first day of March file with the Superintendent of Insurance in such form as he may require, a statement under oath of its president and secretary, or corresponding officers, of its condition and standing on the thirty-first day of December next preceding and of its transactions for the year ending on that date, and shall, also, furnish such other information as the Superintendent may deem necessary to a proper exhibit of its business and plan of working. The Superintendent may at other times require any further statement he may deem necessary to be made relating to such associations.

Sec. 25. [**Examination of domestic associations.**] The Superintendent of Insurance, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic association. He may employ assistants for the purposes of such examination and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the association and may

summon and qualify as witnesses under oath and examine its officers, agents, employes and other persons in relation to the affairs, transactions and condition of the association. The expenses of such examination shall be paid by the State Treasurer on the warrant of the State Auditor on the certificate of the Superintendent of Insurance from the proper appropriations.

Whenever after examination the Superintendent is satisfied that any domestic association has failed to comply with any provision of this law or is exceeding its powers; or is not carrying out its contracts in good faith; or is transacting business fraudulently; or whenever any domestic association, after the existence of one year or more shall have a membership of less than three hundred, or votes to discontinue business, the Superintendent of Insurance may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction and such court shall thereupon notify the officers of such association of a hearing, and, unless it shall then appear that some special and good reason exists why such association should not be closed, said association shall be enjoined from carrying on any further business, and some person shall be appointed receiver of such association and shall proceed at once to take possession of the books, papers, moneys, and other assets of the association and shall forthwith, under the direction of the court, proceed to close the affairs of the association and to distribute its funds to those entitled thereto. No such proceeding shall be commenced by the Attorney General against any such association until after notice has been duly served on the chief executive officers of the association and a reasonable opportunity given to it on a date to be named in said notice to show cause why such proceedings should not be commenced.

Sec. 26. [**Application for receiver, etc.**] No application for injunction or other proceedings for the dissolution of, or the appointment of a receiver for, any such domestic association or branch thereof shall be entertained by any court in this State unless the same is made by the Attorney General.

Sec. 27. [**Examination of foreign associations.**] The Superintendent of Insurance, or any person whom he may appoint, may examine any foreign association transacting or applying for admission to transact business in this State. The Superintendent may employ assistants for the purpose of such examination and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the association and may summon and qualify as witnesses under oath and examine its officers, agents, employes and other persons in relation to the affairs, transactions and condition of the asso-

ciation. He may in his discretion accept in lieu of such examination the examination of the Insurance Department of the state, territory, district, province or country where such association is organized. All examinations made under the provisions of this section shall be made without expense to the association examined.

If any such association or its officers refuse to submit to such examination or to comply with the provisions of this section relating thereto, the authority of such association to transact business in this state shall be revoked until satisfactory evidence is furnished the Superintendent relating to the condition and affairs of the association and during such revocation the association shall not transact any business in this State.

Sec. 28. [Revocation of license.] When the Superintendent on investigation is satisfied that any foreign association transacting business under this act has exceeded its powers, or has failed to comply with any provision of this law, or is conducting business fraudulently, or is not carrying out its contract in good faith, he shall notify the president and secretary, or other officers corresponding thereto, of his findings, and state in writing the grounds of his dissatisfaction and after reasonable notice require said association on a date named to show cause why its license should not be revoked. If on the date named in said notice such objections have not been removed to the satisfaction of the Superintendent, or the association does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of the association, to continue business in this state. All decisions and findings of the Superintendent made under the provisions of this section may be reviewed by proper proceedings in any court of competent jurisdiction as provided in section seventeen of this act.

Sec. 29. [Exemption of certain associations.] Nothing contained in this act shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance branch of the Supreme Lodge Knights of Pythias), or to similar orders which do not issue insurance certificates, nor to local lodges of an association now doing business in this State, that provide death benefits not exceeding three hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both; nor to any contracts of reinsurance of or between such local lodges of such association, now doing business on such plan in this State, nor to domestic associations which limit their membership to the employes of a particular city or town, designated firm, business house or corporation; nor to domestic lodges, orders, or associations of a purely religious, charitable and benevolent description, which do not operate with a view to profit and which do not provide for a death benefit of more than one hun-

dred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year, *provided* always that any such domestic order or association which has more than five hundred members, and provides for death or disability benefits and any such domestic lodge, order or association which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all the requirements of this act. The Superintendent of Insurance may require from any association such information as will enable him to determine whether such association is exempt from the provisions of this act. No association which is exempt by the provision of this section from the requirements of this act shall give or allow or promise to give or allow to any person any compensation for procuring new members.

Sec. 30. [**Penalties.**] Any person, officer, member or examining physician, who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any association transacting business under this act, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court, and any person who shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association, for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or declaration under oath required or authorized by this act, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this State in relation to the crime of perjury.

Any person who shall solicit membership for, or in any manner assist in procuring membership in, any association not licensed to do business in this State; or who shall solicit membership for, or in any manner assist in procuring membership in, any such association not authorized as herein provided to do business as herein defined in this State, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Any association, or any officer, agent or employe thereof, neglecting or refusing to comply with, or violating any of the provisions of this act, the penalty for which neglect, refusal or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof.

Sec. 31. [Construction.] The word "association" as used in this act shall be taken and construed as meaning a fraternal beneficiary corporation, society, order or voluntary association as defined in section 1. The words "domestic association" shall be taken and construed as meaning an association organized or incorporated under the laws of this State. The words "foreign association," shall be taken and construed as meaning an association organized or incorporated under the laws of another territory, district, state, province or country. All provisions of each section of this act except as otherwise provided shall be taken and construed as applying to both domestic and foreign associations.

In event of a vacancy in the office of the Superintendent of Insurance or in the absence or disability of that officer the Deputy Superintendent of Insurance shall perform all the duties required of the Superintendent by this act.

Sec. 32. The act of the General Assembly of the state of Ohio entitled "An act regulating Fraternal Beneficiary societies, orders and associations," passed April 27, 1896 (Sections 3631-11, 3631-12, 3631-13, 3631-14, 3631-15, 3631-16, 3631-17, 3631-18, 3631-19, 3631-20, 3631-21, 3631-22 and 3631-23, Revised Statutes) and the act of the General Assembly of the State of Ohio entitled "An act to amend section 3631-13 of the Revised Statutes of Ohio," passed May 12, 1902, be and the same are hereby repealed. [Approved April 26, 1904.]

AN ACT

Permitting certain fraternal beneficiary associations that have been doing business within the state of Ohio to continue their business therein.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 1. Any fraternal beneficiary society organized under the laws of any other state, and doing business pursuant to the laws of the state where organized, which has been doing business in this state for a period of five years or more and for four years under license of the superintendent of insurance and has at this time a membership of not less than two thousand within the state, shall be permitted to continue its business therein and be licensed therefor in accordance with the provisions of this act.

Sec. 2. Before receiving a license to continue business within this state, any society coming within the provisions of section 1 hereof shall file with the superintendent of insurance a duly certified copy of its charter or articles of association; a copy of its constitu-

tion or laws, certified by its secretary or corresponding officer; a power of attorney to the superintendent as provided in the general fraternal beneficiary law; a certificate from the proper official in its home state, province or country that the association is legally organized; a copy of its contract which must show that benefits are provided for by assessments upon, or other payments by, persons holding similar contracts, and upon furnishing the superintendent such other information as he may deem necessary to a proper exhibit of its business and plans of working, and, if the superintendent finds that its assets are invested in accordance with the laws of its home state, province or country where it is organized, he shall license such association to do business in this state until the first day of the succeeding April, and such license shall, upon compliance with the provisions of this act, be renewed annually, but in all cases to terminate on the first day of the succeeding April; provided, however, that no license or renewal shall be issued to any association not now authorized by the superintendent of insurance to transact business in this state as herein defined, or not now licensed by the supervising insurance official of any other state to transact business therein, which has not adopted a rate of assessments or payments for death benefits at least equal to those required by the national fraternal congress table of mortality with interest at four per cent. For each such license or renewal the association shall pay the superintendent twenty-five dollars ($25.00).

Sec. 3. All of the provisions of the general fraternal beneficiary law not inconsistent with this act shall apply to associations or societies coming within the provisions of this act. [Approved April 26, 1904.]

CHAPTER XI.

TITLE II—DIVISION II—PART SECOND.

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Sec. 3632. [**Articles of incorporation to be approved by attorney general.**] The articles of incorporation of a company formed for the purpose of insurance, other than life insurance, must be forwarded to the secretary of state, who shall submit the same to the attorney general for examination, and if found by him to be in accordance with the provisions of this chapter, and not inconsistent with the constitution and laws of this state and of the United States, shall certify and deliver back the same to the secretary, who may reject any name or title of any company applied for when he deems the same similar to one already appropriated, or likely to mislead the public. [69 v. 140, § 1; (S. & S. 205).]

Sec. 3633. [**To be recorded by secretary of state, and copy deposited with superintendent.**] Upon the approval of the articles by the attorney general and the secretary of state, the secretary shall cause the same to be recorded and copied in the same manner as is provided in the preceding chapter, and a copy thereof to be deposited with the superintendent of insurance, who shall withhold from the company the certificate of authority if its name is so similar to the name of any other company as to mislead the public. [69 v. 140, § 2; 75 v. 557, §§ 1, 2.]

Sec. 3634. [**Capital of joint stock companies.**] Except as hereinafter provided, no joint stock insurance company shall be organized under this chapter, or permitted to do business in this state with a less capital than one hundred thousand dollars, which must be fully paid up before the company shall be entitled to transact business, except, that but twenty-five per cent. of the capital stock of a live stock company must be paid up before the same shall have the right to do business.

[**Amount and character of subscription in mutual fire companies necessary.**] Any company so incorporated for the purpose of transacting the business of fire insurance on the mutual plan shall thereupon have the power to elect officers and, upon procuring from the superintendent of insurance his certificate that it has filed with him its bond in the sum of ten thousand dollars approved by him, conditioned upon the faithful accounting of all funds and property coming into its hands, such companies shall have the power to solicit subscriptions for insurance and accept premiums, which shall be held by the company in trust for the respective subscribers until policies of insurance are issued to such subscribers. Such company shall not issue policies or grant any insurance until it has procured the certificate of the superintendent of insurance provided for in section 3640 of the Revised Statutes, and such certificate shall not be issued until not less than five hundred thousand dollars of insurance in not less than two hundred separate risks, no one of which shall exceed five thousand dollars, have been subscribed, and the premiums thereon, for one year, paid in cash by the subscribers, aggregating not less than ten thousand dollars in cash, each subscriber agreeing, in writing, to assume a liability to be named in the policy, subject to call by the board of directors, in a sum not less than three nor more than five annual premiums. And the same liability shall also be agreed to in writing by each subsequent subscriber or applicant for insurance who is not a merchant or manufacturer. And each subscription before incorporation shall be accompanied by a certificate of a justice of the peace of the township or city where such subscriber resides, that the subscriber is, in his opinion, pecuniarily good and responsible to the extent of the contingent liability agreed to be assumed.

[**Annual cash premiums collectible in advance by mutual companies.**] Mutual fire insurance companies organized under this act may thereafter charge and collect in advance upon their policies a full annual premium in cash, but such policy shall not compel subscribers, insured or assured, to renew any policy nor pay a second or further annual or term premium.

[**Contingent mutual liability for losses and expenses.**] Any such company must in its by-laws, and must in its policies, fix by a uniform rule the contingent mutual liability of its members for the payment of losses and expenses; and such contingent liabilities shall not be less than three nor more than five annual cash premiums as written in the policy; but such liability shall cease with the expiration of the time for which a cash premium has been paid in advance, except for liability incurred during said time;

[**Mutual fire associations not included.**] but nothing in this section shall apply to associations for the mutual protection of their members against loss by fire heretofore or hereafter organized as provided in section 3686 of the Revised Statutes. [1904, April 22; 94 v. 301; 88 v. 102; 87 v. 224; 85 v. 273; Rev. Stat. 1880; 75 v. 561, § 3; (S. & S. 205).]

Cited State *v.* Man. Mutual Fire Ass'n, 50 O. S. 145, 150.

Section 2 of the act of 1888, April 14 (85 v. 273), amending sections 3634, 3648, 3650, 3651, 3652, 3654, and 3663 of the Revised Statutes of Ohio, reads as follows:

"SEC. 2. [*Companies doing business on the 'premium note plan;' repeal; section to remain in force as to certain mutual companies.*] This act shall not affect companies now doing business on the premium note plan, unless they elect to dispense with said notes and embody the contingent liability in the policy as herein provided; and said original sections 3634, 3648, 3650, 3651, 3652, 3654 and 3663 are hereby repealed. Provided, that said section shall remain in force as to all mutual companies now doing business, which do not elect to reorganize under the said sections as amended by this act.

"SEC. 3. This act shall take effect and be in force from and after July 1st, 1883."

See appendix.

Sec. 3635. [**Books of subscription to stock.**] The persons named in the articles of incorporation, or a majority of them, shall be commissioners to open books for the subscription of stock in the company, at such times and places as they deem convenient and proper, and shall keep the same open until the full amount specified in the articles is subscribed. [69 v. 140, § 4; (S. & S. 206).]

See § 3242.

To entitle a person to become a member of a corporation, which is being organized under "an act to regulate insurance companies" (S. & S. 205), his contract to take shares therein must be in writing, and be mutually binding on both parties: Fanning *v.* Insurance Co., 37 O. S. 399.

A recovery can not be had by the corporation on a verbal promise to take shares in the absence of facts showing that the promiser is estopped from setting up such want of consideration: *Ib.*

Sec. 3636. [**Election of directors.**] Within one month after the subscription books are filled, and the articles of incorporation filed with the secretary of state, a majority of subscribers to the stock shall hold a meeting for the election of not less than five nor more than twenty-one directors, who must be stockholders or members, and the number thereof may at any time thereafter be increased or diminished between the same limits, at the will of the stockholders representing a majority of the stock or a majority of the members; each member of a mutual company shall be entitled to one vote, and each stockholder in other companies shall be entitled to one vote for each share of stock he holds; and mutual companies may, if they so provide in their by-laws, elect directors for the term of three years, the term of office of one-third of the number elected to expire each year, and those who receive the highest number of votes at the first election to serve for the longest term. [70 v. 180, § 5; 60 v. 75, § 1; S. & S. 217; (S. & S. 206).]

Sec. 3637. [**How company must invest its capital.**] No company organized under this chapter, or incorporated under any law of this state, for the purposes provided in section *thirty-six hundred and thirty-two,* shall invest its capital or any part thereof, other-

wise than in: (1)United States bonds; (2) Ohio state bonds; (3) bonds of a county, township, or municipal corporation in this state, issued in conformity with law; (4) bonds and mortgages on unincumbered real estate within this state, worth double the amount loaned thereon; if the amount loaned shall exceed one-half the value of the land mortgaged exclusive of structures thereon, such structures shall be insured in an authorized fire insurance company other than the company making such loan in an amount not less than the difference between one-half the value of such land exclusive of structures, and the amount loaned, and the policy assigned to the mortgagee; (5) the stock of any national bank located in this state, organized under the provisions of an act of congress entitled "An act to provide a national currency, secured by the pledge of United States stocks, and to provide for the circulation and redemption thereof," approved February 25, 1863, and acts amendatory thereof and supplementary thereto; or, (6) first mortgage bonds of railroads within this state, upon which default in the payment of the interest coupons has not been made within three years previous to the purchase thereof. [70 v. 147, § 6; (S. & S. 206); R. S. of 1880; 95 v. 59.]

Sec. 3638. [**How it may invest its accumulations.**] Funds accumulated in the course of business, or surplus money over and above the capital stock of a company, may be loaned on or invested in the above named securities, or, (1) bonds and mortgages on unincumbered real estate within the state, worth fifty per cent. more than the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some company authorized to do business in this state, and the policy is transferred to a company making the investment; (2) bonds of any state of the United States; (3) stocks, bonds, or other evidences of indebtedness of any solvent, dividend-paying institution incorporated under the laws of this or any other state, or of the United States, except its own stock; or, (4) negotiable promissory notes maturing in not more than six months from the date thereof, secured by collateral security through the transfer of any of the classes of securities above described in this or the preceding section, with absolute power of sale within twenty days after default in payment at maturity. [70 v. 147, § 6.]

Sec. 3639. [**Limitation on the powers of investment.**] No company shall own more than one-fourth of the capital stock of any national bank, nor invest in nor loan on the stocks and bonds, both included, of any railroad company, to an extent exceeding one-tenth of its own capital, nor in the aggregate shall the investment in and loan on all railroad property exceed one-fourth of its capital; not more than one-half of its capital shall be loaned on mortgage of real estate,

as above provided for the investment of capital, and not more than one-tenth of the capital actually existing of any company shall be invested in a single mortgage; the current market value of all such stocks, bonds, or other evidences of indebtedness as above mentioned, in which the accumulations or surplus money over and above the capital stock of any insurance company may be loaned or invested, shall be at all times during the continuance of such loans at least twenty per cent. more than the sum loaned thereon; and if any investment or loan be made in a manner not authorized by this chapter, the directors who make or authorize the same shall be personally liable to the stockholders for any loss occasioned thereby; but insurance companies organized under the laws of this state, now doing business, shall not be compelled to change any investment made in accordance with the acts heretofore passed regulating such companies. [70 v. 147, § 6.]

Sec. 3640. [**Examination by the superintendent.**] When a company notifies the superintendent of insurance that the proceedings required by the preceding section have been had, he shall make an examination of the condition of the company, and if he find that the capital required of the company has been paid in and is possessed by it in money, or in such stocks, bonds, and mortgages as are required by this chapter, he shall so certify; or he may cause such examination to be made by some disinterested person specially appointed by him for the purpose, who shall certify his finding to the superintendent under oath; the signers of the articles of incorporation, or the officers of the company, shall also certify, under oath, that the capital exhibited is bona fide, the property of the company; such certificates shall be filed in the office of the superintendent; and thereupon the company shall file with the superintendent a certified copy of its articles of incorporation and approval of the attorney general, and a copy of its by-laws and constitution. And if the superintendent shall find that the company is duly organized and has complied with the law and entitled to transact business and issue policies, unless he find the name assumed by the company so nearly similar to the name of another company doing business in this state as to lead to confusion or uncertainty on the part of the public, he shall furnish the company with his license duly reciting that the company has complied with the law and is entitled to transact the business authorized, describing it, which license shall be the authority to commence business and issue policies; and so long as the company complies with the law, the superintendent shall, annually upon its application, renew such license. Certified copies of such license may be used in evidence for or against the company in all actions. [1904, April 22; 69 v. 140, § 7; (S. & S. 207).]

Sec. 3641. [Powers of companies.] A company may be organized or admitted under this chapter to:

1. Insure houses, buildings and all other kinds of property against loss or damage by fire and lightning and tornadoes, in and out of the state, and make all kinds of insurance on goods, merchandise and other property in the course of transportation, whether on land or water, or on any vessel or boat wherever the same may be.

2. Make insurance on the health of individuals and against personal injury, disablement or death, resulting from traveling or general accidents by land and water; make insurance against loss or damage resulting from accident to property, from cause other than fire or lightning; guarantee the fidelity of persons holding places of public or private trust, who may be required to, or do, in their trust capacity, receive, hold, control, disburse public or private moneys or property; guarantee the performance of contracts other than insurance policies, and execute and guarantee bonds and undertakings required or permitted in all actions or proceedings, or by law allowed; make insurance to indemnify employers against loss or damage for personal injury or death resulting from accidents to employes or persons other than employes and to indemnify persons and corporations other than employers against loss or damage for personal injury or death resulting from accidents to other persons or corporations, provided that any company of another state, territory, district or country admitted to transact said last named business of indemnifying employers and others shall, in addition to any other deposit required by other laws of this state, deposit with the superintendent of insurance for the benefit and security of all its policy holders fifty thousand dollars in bonds of the United States or of the state of Ohio, or of a county, township, city or other municipality in this state, which shall not be received by the superintendent at a rate above their par value. The securities so deposited may be exchanged from time to time for other securities, and so long as the company so depositing continues solvent and complies with the laws of this state it shall be permitted by the superintendent to collect the interest on such deposits.

3. Make insurance on the lives of horses, cattle or other live stock against loss by death caused by accident, disease, fire or lightning, and against loss by theft and damage by accident; provided, that such companies shall have a capital of one hundred thousand dollars, with at least twenty-five (25) per cent. of the capital stock paid up.

4. Receive on deposit and insure the safekeeping of books, papers, moneys, stocks, bonds and all kinds of personal property;

lend money on bottomry or respondentia, and cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property by means of any loan which it may have made on mortgage, bottomry or respondentia, and generally to do and perform all other matters and things proper to promote these objects.

[**Limitation.**] No company shall be organized to issue policies of insurance for more than one of the above four mentioned purposes, and no company organized for either one of the said purposes shall issue policies of insurance of any other.

Provided, however, that companies organized, or that may hereafter be organized under subdivision 2 hereof, which do the business of guaranteeing the fidelity of persons, holding places of public or private trust, who may be required to or do, in their trust capacity, receive, hold, control, disburse public or private property, and guaranteeing the performance of contracts other than insurance policies, and executing and guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed, shall have power to indemnify bank depositors against loss by reason of bank suspension and failure.

[**Deposit required of guarantee companies.**] Provided, also, that no company organized under the laws of this state to transact the business of guaranteeing the fidelity of persons holding places of public or private trust, or of executing or guaranteeing bonds or undertakings, as aforesaid, shall commence business until it has deposited with the superintendent of insurance two hundred thousand dollars in securities permitted by sections 3637 and 3638 of the Revised Statutes, which shall be held by said superintendent for the benefit and security of all the policy holders of the company, and which shall not be received by the said superintendent at a rate above their par value; nor shall a company, organized under the laws of another state, territory, district or country be licensed to transact any such business in this state unless at least two hundred thousand dollars of its assets are invested in securities permitted by sections 3637 and 3638 of the Revised Statutes of this state, or if a company of another state, district or territory, in securities permitted by the laws of the state, district or territory in which the company is organized, and such securities are deposited with the superintendent of insurance of this state, or the superintendent of insurance or other officer of another state, district or territory designated by the laws of such state to receive the same, and if such securities are deposited with the superintendent of insurance or other officer of another state, district or territory, the superintendent of insurance of this

state shall be furnished with a certificate of such officer under his hand and official seal that he, as such officer, holds in trust on deposit for the benefit of all the policy holders of such company the securities above mentioned, giving the items of such securities, and stating that he is satisfied such securities are worth at least two hundred thousand dollars; the securities so deposited with the superintendent of insurance may be exchanged from time to time for other like securities, and so long as the corporation depositing the securities shall continue solvent and comply with the laws of this state it shall be permitted by the superintendent of insurance to collect the interest or dividend on such deposit.

[**Denial of corporate power barred.**] Provided, also, that any company which shall execute any bond as surety under the provisions of this act shall be estopped in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability,

[**Foreign insurance companies; return of deposits.**] and the superintendent of insurance and other officers of this state having the control or custody of any deposit of $30,000 in securities heretofore required to be made by companies of other states under section 3641 of the Revised Statutes of Ohio, shall deliver the same to the depositors thereof and said officers shall be and are hereby relieved from further custody and control or liabilities for or in respect of the same or the surrender thereof from and after the passage of this act. [1904, April 25; 95 v. 81; 93 v. 170; 91 v. 138; 90 v. 157; 88 v. 102; 82 v. 185; Rev. Stat. 1880; 71 v. 65, § 8; (S. & S. 229).]

Insurance on Ohio property by agency outside of state is a violation of law: See § 2745*a*.

As to procedure to collect claims from funds deposited with state superintendent of insurance, treasurer, etc., see § (281—1)et seq.

See note to State *v.* Aetna Life Insurance Co., 69 O. S., under § 3596.

The expression in paragraph 2 "guarantee the performance of contracts other than insurance policies" does not authorize credit indemnity business: Ins. Supt. Ruling, 1900.

Sec. 3641*a*. [**Fire insurance companies may insure against lightning, explosion and tornadoes.**] All companies heretofore organized, or that may hereafter be organized, for the purpose of insuring against loss or damage by fire, may insure against loss or damage by lightning, explosions from gas, dynamite, gunpowder, and other like explosions and tornadoes. [88 v. 304; 81 v. 93; 80 v. 170.]

Sec. 3641*b*. [**Accident and guaranty companies may insure against accidents to employes, etc.; deposit.**] [Repealed 1904, April 25; 91 v. 352; 88 v. 304.]

Sec. 3641*c*. [**Sufficiency of bonds, etc., executed by companies; other bonds.**] In all cases in which any bond, recognizance or undertaking is now or hereafter may be required or permitted by law, or ordinance, or the head of any department of this state, or any

division of government of [or] municipality thereof, with one or more sureties, the execution of the same or the guaranteeing thereof, as the case may be, as surety, shall be sufficient by a company or companies authorized by the laws of this state to guarantee the fidelity of persons holding places of public or private trust, to guarantee the performance of contracts other than insurance policies, and to execute and guarantee bonds and undertakings in actions or proceedings or by law allowed; and the execution or guaranteeing, as surety, of all bonds and undertakings for the faithful performance of official or fiduciary duties, or the faithful keeping, applying or accounting for funds or property, or for one or more of such purposes, excepting bonds of the superintendent of insurance and of notaries public, or of executors, administrators, guardians, trustees or other fiduciaries, whose bonds are fixed by the court at an amount not in excess of two thousand dollars is hereby required to be by such company or companies. But no such company shall qualify as surety upon any one bond or undertaking, herein required to be a corporate surety bond or undertaking, for more than twenty per cent. of its paid up capital. And any such bond, recognizance or undertaking when so executed and guaranteed, shall be in all respects, a full and complete compliance with every requirement of law, ordinance, rule or regulation that such bond, undertaking or recognizance shall be executed and guaranteed by one surety or two or more sureties, or that such sureties shall be residents or householders or freeholders; and any judge, court or officer, whose duty it is to pass upon the account of any assignee, trustee, receiver, guardian, executor, administrator or other fiduciary, required by law to give bond or undertaking as such, and whenever any such assignee, receiver, trustee, guardian, executor, administrator or other fiduciary, has given bond or undertaking with a surety company or companies as surety or sureties thereon, as herein provided, shall allow, in the settlement of the account of such assignee, receiver, trustee, guardian, executor, administrator or other fiduciary a reasonable premium, subject to the limitations hereinafter provided, paid to any such company or companies for becoming his surety on such bond or undertaking; in all other cases, where by the foregoing provisions of this act a corporate surety or guarantor is required, the premium to be paid to any such company or companies for becoming such surety or guarantor shall be paid out of the general funds of the divisions of government by or for which the person giving such bond or undertaking was appointed or elected; provided, however, that the premium shall in no case exceed in the aggregate one-half of one per cent. per annum on the amount of such bond or undertaking, unless such bond

or undertaking shall be in double the amount of the liability of the party principal therein, when such premium shall not exceed in the aggregate one-fourth of one per cent. per annum on the amount of such bond or undertaking, provided, also that such company or companies have complied and continued to comply with the laws of this state relative to such companies, and with such requirements as to justification, as may be prescribed by the head of the department, court, judge, or officer required to approve or accept the same.

Provided, further, that if any person required to give any such bond or undertaking shall make affidavit that he has applied to any such company or companies, as the case may be, for such bond or undertaking, and that the same has been refused by such company or companies, or rejected, in accordance with the provisions hereof by the head of the department, court, judge, or officer required to approve or accept the same; upon filing such affidavit with such head of department, court, judge, or officer, such person may give such bond or undertaking with such personal surety or sureties and such justification of sureties as would be required by law except for the passage of this act; provided, further, that no surety company or companies executing bonds for public officials shall require or receive collateral or other security from the public officials for whom such bond or bonds are executed. [1904, April 22; 92 v. 320; 90 v. 157; 88 v. 14.]

Sec. 3641*d*. [Deposit required of title guaranty and abstract company; requirements as to stock.] [92 v. 320; Repealed 95 v. 223, April 22, 1902.]

Sec. 3642. [Directors of insurance company to elect officers; by-laws and regulations.] The directors shall choose from their own number by ballot, a president, and shall fill all vacancies that may arise in the board, or in the presidency thereof; the board of directors, or a majority of them, when convened at the office of the company, may appoint a secretary and any other officers or agents necessary for transacting the business of the company, and pay such salaries and take such securities as they may judge reasonable; they may ordain and establish by-laws and regulations not inconsistent with the constitution and laws of this state and of the United States, as shall appear to them necessary for regulating and conducting the business of the company; but no new by-laws or regulation shall take effect until the same has been approved by the state commissioner of insurance and a copy thereof has been filed in the office of said commissioner, and they shall keep full and correct records of their transactions, which shall, at all times, be open to the inspection of the members or stockholders. [1883, March 5: 80 v. 41; Rev. Stat. 1880; 69 v. 140, § 10; (S. & S. 208).]

Sec. 3643. [**Extent of liability under policy of insurance.**] Any person, company, or association, hereafter insuring any building or structure against loss or damage by fire or lightning, by a renewal of a policy heretofore issued, or otherwise, shall cause such building or structure to be examined by an agent of the insurer, and a full description thereof to be made, and the insurable value thereof to be fixed by such agent; in the absence of any change increasing the risk without the consent of the insurers, and also of intentional fraud on the part of the insured, in case of total loss, the whole amount mentioned in the policy or renewal upon which the insurers receive a premium shall be paid, and in case of a partial loss the full amount of the partial loss shall be paid; and in case there are two or more policies upon the property, each policy shall contribute to the payment of the whole or the partial loss in proportion to the amount of insurance mentioned in each policy; but in no case shall the insurer be required to pay more than the amount mentioned in its policy. [76 v. 26, § 1.]

Effect of compromise with portion of companies upon liability of others: Good *v.* Insurance Co., 43 O. S. 394.

The insured covenanted that the insurance asked for did not exceed two-thirds of the actual cash value of the property. The policy insured it for the sum asked, and made the application a part of the contract. Issue was joined (in the suit on the policy) upon an averment by the company that the covenant was untrue, as the applicant well knew when he made it. At the trial, conflicting evidence was before the jury on this issue, but the court directed a verdict for the plaintiff for "the value of the property destroyed by fire covered by the policy of insurance described in this case, not exceeding the amount of insurance upon the part thus destroyed," and refused to give any instruction applicable to the issue as to the covenant: Held, this was error: Insurance Co. *v.* McCluckin, 40 O. S. 42.

In case of total loss the entire amount of the policy is recoverable: Ins. Co. *v.* Leslie, 47 O. S. 409; Ins. Co. *v.* Hull, 51 O. S. 270, 278; Sun Mut. Ins. Co. *v.* Hock, 8 C. C. 341; 1 O. D. 690.

The neglect of the agent to examine the property and fix a value does not prevent the operation of the statute: Ins. Co. *v.* Leslie, 47 O. S. 409.

Conditions in the policy for a different rule are not binding. *Id.*

A condition in a policy avoiding it if the building becomes vacant is modified by this statute and the company must show that the risk was increased thereby: Moody *v.* Ins. Co., 52 O. S. 12.

This section does not relate to the title or incumbrances: Webster *v.* Ins. Co., 53 O. S. 558. (affg. 7 C. C. 511), *contra* see 7 C. C. 356.

Additional insurance increases the risk as matter of law and hence a condition against it is not within § 3643: Sun Fire Office *v.* Clark, 53 O. S. 414.

A judgment on cognovit is not "suffering" an incumbrance: People's Mut. Ins. Co. *v.* Bowersox: Supr. Ct. not rep. 31 Bull. 56.

Mortgaging the property is no defense unless the risk was increased, which is a question of fact: Henderson *v.* Ohio Far. Ins. Co., 2 N. P. 17; 2 O. D. 189.

A boiler and engine may be a "structure" under § 3643; Ins. Co. *v.* Luce, 11 C. C. 476; 5 O. D. 210.

Where there is a total loss on a structure, the insurance company is bound to pay the entire amount named in its policy, although there was concurrent insurance by other companies; a clause requiring the determination of the amount of loss to be submitted to appraisers is void: Ins. Co. *v.* Port Clinton Fish Co., 14 C. C. 169; 7 O. D. 468.

As to what is a total loss, see same case.

Insured assigned his policy to M. as collateral to a loan on mortgage. The house burned down. The policy provided to pay the mortgagee $400 or as much thereof as was necessary to satisfy the mortgage after applying the proceeds derived from the mortgage; also that where a policy is issued to a mortgagee, or is held as collateral to a mortgage, the assured cannot demand or recover any part until collection of the mortgage. It was contended that "demand or recover" did not prevent action but only stayed execution, especially in view of a six months' limitation on the policy; also that § 3643 prohibited any defense except fraud and increase of hazard. Held, the petition is not demurrable and action lies though the property has not been sold on foreclosure: German Ins. Co. *v.* Mirick, Supreme Ct. without report, 38 W. L. B. 172.

An insured by consenting to arbitrate the amount of loss sustained by fire in pursuance to the provisions of the policy, is not precluded in a suit upon the policy from claiming and recovering as for a total loss, if the evidence sustains his claim. The provisions of section 3643 Revised Statutes being founded upon public policy, the insured can not be held to a waiver of them: Penna. Fire Ins. Co. *v.* Drackett et al., 63 O. S. 41.

Where a building is so far destroyed by fire as to lose its identity and specific character as a building, and the parts that remain cannot be utilized to its advantage in re-construction, there is a total loss within the meaning of section 3643 Revised Statutes: *supra.*

A condition in a policy insuring a building against loss or damage by fire, which purports to give the insurer the option to rebuild in case of total loss, is repugnant to this section, and void: Milwaukee Mechanics Insurance Co. *v.* Russell, 65 O. S. 230.

Sec. 3643*a*. [**Insertion of co-insurance clause in policy unlawful; penalty.**] [92 v. 107; Repealed 95 v. 341, May 2, 1902.]

Sec. 3643*b*. [**Arbitrators and umpires must be resident of county; how long.**] [91 v. 357; Repealed 95 v. 341, May 2, 1902.]

Sec. 3644. [**When solicitor held to be agent of insurer.**] A person who solicits insurance and procures the application therefor, shall be held to be the agent of the party, company or association thereafter issuing a policy upon such application or renewal thereof, anything in the application or policy to the contrary notwithstanding. [1904, April 22; 76 v. 26, § 2.]

A soliciting agent, procuring for an insurance company risks and applications on which policies are issued, who fills up the application, is, in so doing, the agent of the company, and not of the insured; and if the agent make a mistake, in wrongly stating facts which were correctly given him by the insured, in preparing the application, the company is bound by and responsible for such mistake: Insurance Co. *v.* Williams, 39 O. S. 581.

An agent may waive notice and proof of loss, although the policy expressly provides that an agent has no such authority: Ohio Farmers' Ins. Co. *v.* Danison, Supreme Court without report, 38 W. L. B. 163.

Where an insurance agent employs another broker to obtain insurance, both agents are considered the agents of the insurance company: Ins. Co. *v.* Lake Erie Provision Co., 13 C. C. 662; 7 O. D. 562.

Cited. Ins. Co. *v.* Port Clinton Fish Co., 14 C. C. 168; 7 O. D. 468.

Sec. 3645. [**How contracts to be evidenced.**] All policies or contracts of insurance made or entered into by the company may be made either with or without the seal of the company; and they shall be subscribed by the president or such other officer as may be designated by the directors for that purpose, and shall be attested by the secretary, and, when so subscribed and attested, they shall be obligatory on the company. [69 v. 140, § 11; (S. & S. 208).]

When the charter of an insurance company confers upon it power "generally to do and perform all things relative to the object of the association," and provides in a subsequent section that "all policies or contracts of insurance" shall be subscribed by the president, or some other officer designated by the board of directors for that purpose, the latter provision does not disable the company from binding itself by contract for policies and immediate insurance executed in other modes and by other agents, but merely prescribes the manner in which the final contract or policy shall be executed: Insurance Co. *v.* Kelly, 24 O. S. 345.

A policy of insurance must be in writing: Cockerill *v.* Insurance Co., 16 O. 148.

A verbal waiver of the forfeiture of a policy of insurance is not binding: *Ib.*

Sec. 3646. [**Transfers of stock.**] Transfers of stock may be made on the books of the company by any shareholder, or his legal representative, subject to such reasonable restrictions as the directors may, from time to time, make in their by-laws, and subject, also, to any provisions of the laws of this state relating to such transfers. [69 v. 140, § 12; (S. & S. 208).]

Sec. 3647. [**How stock may be increased.**] When a company organized under this chapter requires, in the opinion of the directors thereof, an increased amount of capital, they shall, if authorized by the holders of two-thirds of the stock, file with the secretary of state a certificate setting forth the amount of such desired increase, and

thereafter such company shall be entitled to have the increased amount of capital fixed by such certificate; and the examination of securities composing the capital stock thus increased shall be made in the same manner as is provided in section *thirty-six hundred and forty* for capital stock originally paid in. [69 v. 140, § 13; (S. & S. 209).]

Sec. 3648. [Dividends to be payable from surplus profits only; reservations therefrom; penalty for violations of this section; scrip dividends by participating or mutual companies; interpretation of words "year" and "profits;" accumulation of a permanent fund; rights of policy holder after determination of policy.] No fire insurance company organized under any law of this state shall make any dividend except from the surplus profits arising from its business; and in estimating such profits there shall be reserved therefrom:

1. An unearned premium fund computed in accordance with the requirements of section *thirty-six hundred and fifty-four* of the Revised Statutes.

2. All sums due the company on bonds and mortgages, bonds, stocks, and book accounts, of which no part of the principal nor the interest thereon has been paid during the preceding year, and on which an action has not been commenced, or which, after judgment obtained thereon, has remained more than two years unsatisfied, and on which interest has not been paid; and

3. All interest due or accrued, and remaining unpaid, for which the company does not hold securities as hereinbefore provided. Any dividend made contrary to the provisions of this section shall subject the company which makes the same to a forfeiture of its charter, and each stockholder who receives it to a liability to the creditors of the company to the extent of the dividend received, besides the other penalties and punishments prescribed by law; but this section shall not prevent the declaration of scrip dividends by participating or mutual companies, yet no such scrip dividend shall be declared to an amount in excess of or be paid except from profits, after reserving all sums above provided including the whole amount of premiums on unexpired risks; and the word "year," whenever used in this section shall be construed to mean the calendar year, and the "profits" of a mutual insurance company are that portion of its cash funds not required for payment of losses and expenses nor set apart for any purpose required by law. Any such company may in its by-laws, provide for the accumulation of a permanent fund, by reserving a portion of the net profits, to be invested and be a reserve for the security of the insured. When the business of such company is confined to the state of Ohio, such reservation shall not exceed twenty-five per

cent. of said net profits; and when the sum so accumulated amounts to two per cent. of the sum insured by all policies in force, the whole of the net profits thereafter shall be divided among the insured at the expiration of their policies. But any such company doing business outside the state of Ohio may set aside and thereafter maintain a permanent fund equal to the minimum amount of net cash assets or capital required to do business in any other state or states according to the insurance laws thereof. The permanent fund so accumulated shall be used for the payment of losses and expenses, whenever the cash funds of the company in excess of an amount equal to its liabilities are exhausted; and whenever the said fund is drawn upon, the reservation of profits as aforesaid shall be renewed or continued until the limit of accumulation as herein provided is reached, but within a reasonable time after the determination of any policy the owner thereof shall be entitled to receive and shall be paid his pro rata share of all net profits not included in the aforesaid permanent fund, and a scrip dividend for his contribution to said fund. [1904, April 26; 94 v. 121; 85 v. 274; R. S. of 1880; 70 v. 147, § 14; (S. &. S. 209).]

See note to § 3634.

Sec. 3649. [**What real estate company may hold.**] No company organized under this chapter shall purchase, hold, or convey real estate, except for the purposes and in the manner herein set forth, to-wit:

1. Such as is requisite for its convenient accommodation in the transaction of its business; or,

2. Such as is mortgaged to it in good faith, by way of security for loans previously contracted, or for money due; or,

3. Such as is conveyed to it in satisfaction of debts previously contracted in its legitimate business, or for money due; or,

4. Such as is purchased at sales upon judgement, decree, or mortgages obtained or made for such debts.

No such company shall purchase, hold, or convey real estate in any other case, or for any other purpose; and all such real estate as may be acquired as aforesaid, and which is not necessary for the accommodation of the company in the transaction of its business, shall be sold and disposed of within two years after title thereto is acquired, unless the company procure a certificate from the superintendent of insurance that its interests will suffer materially by a forced sale thereof, when the sale may be postponed for such period as the superintendent shall direct in such certificate. [69 v. 140, § 15; (S. & C. 209).]

Sec. 3650. [**Liability of members of mutual companies to assessment; assessments, how made; for what purposes a debt may be**

created.] Every person who effects insurance in a mutual company, and continues to be insured, and his heirs, executors, administrators, and assigns shall thereby become members of the company during the period of insurance, shall be bound to pay for losses and such necessary expenses as accrue in and to the company in proportion to the original amount of his deposit note or contingent liability; and the directors shall, as often as they deem necessary, settle and determine the sum to be paid by the several members thereof, and publish the same in such manner as they may choose, or as the by-laws prescribe, and the sum to be paid by each member shall always be in proportion to the original amount of such liability, and shall be paid to the officers of the company within thirty days next after the publication of such notice; provided, that whenever such company is not possessed of cash funds above its reinsurance reserve sufficient for the payment of incurred losses and expenses, it shall be deemed to have impaired its capital, and when such impairment shall exceed twenty-five per cent. of the reinsurance reserve required to be maintained, it shall make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to the several liabilities and to make good the reinsurance reserve; and no such company shall borrow money or create a debt unless for the purpose of necessary office buildings, to continue beyond the period when such assessment may be collected and applied to the payment thereof, and no member shall be assessed for liabilities incurred prior to his membership. [Passed April 14, 1888; took effect July 1, 1888: 85 v. 273, 275; 79 v. 133; Rev. Stat. 1880; 69 v. 140, § 16.]

See note to § 3634.

Sec. 3651. [Enforcement of assessments; partial payment of loss.] If a member neglect or refuse, for the space of thirty days after the publication of such notice, and after demand for payment, to pay the sum assessed upon him in [as his] proportion of any loss as aforesaid, the directors may sue for and recover the whole amount of contingent liability, with cost of suit; but execution shall only issue for assessments and costs as they accrue, and every such execution shall be accompanied by a list of losses for which the assessment is made; and if the whole amount of such liability be insufficient to pay the loss occasioned by any fire or fires, the sufferers insured by the company shall receive, toward making good their respective losses a proportional share of the whole amount of such liability, according to the sums by them respectively insured; but no member shall ever be required to pay for any loss occasioned by fire, or inland navigation, more than the whole amount of such liability.

[Passed April 14, 1888; took effect July 1, 1888: 85 v. 273, 275; Rev. Stat. 1880; 69 v. 140, § 16.]

A fire policy in a mutual company contained a condition that it should be void if the assured neglect to pay any assessment for thirty days after request; also, a provision that the assured shall be required to submit to an examination under oath touching the questions relating to the claim, and subscribe the same: Held, that after the non-payment of an assessment for more than thirty days, a loss by fire having occurred during the time, if, with full knowledge of all the facts, the company subjects the assured to an examination under said provision of the policy, the right to a forfeiture is waived: Phoenix Ins. Co. *v.* Hoeffler, 2 C. C. 131.

Sec. 3652. [**How assessments and notice proved.**] In actions for the recovery of assessments duly levied by the directors of any mutual fire insurance company of this state, or for money due on the liability of the members of any such company, the official statement of the president or secretary of such company, under seal, and sworn to, shall be received in court as evidence of the facts essential for making the same, and that such assessment, for the non-payment of which any such action is commenced, has been duly levied, and notice thereof given. [Passed April 14, 1888; took effect July 1, 1888: 85 v. 273, 276; Rev. Stat. 1880; 39 v. 35, § 1; (S. & C. 352).]

Sec. 3653. [**What kind of policies company to issue.**] Every mutual company shall embody the word "mutual" in its title which shall appear upon the first page of every policy and renewal receipt, and every stock company shall express, upon the face of every policy and renewal receipt, in some suitable manner, that such policy or receipt is a stock policy or receipt; but neither class of companies doing business in this state, shall issue any policy other than that appropriate to its class, except that any mutual company now doing business in this state, having net assets not less than two hundred thousand dollars invested as provided in section *thirty-six hundred and thirty-seven*, may issue policies either upon the mutual or stock plan, and may continue to do such kind of business so long as its assets continue so invested, and may expose itself to loss on any risk or hazard, either by one or more policies, to an amount not exceeding five per cent. thereof. [69 v. 140, § 17.]

Sec. 3654. [**Annual reports of companies; mutual insurance companies.**] The president or vice-president and secretary of each insurance company organized under any law of this or any other state, and doing business in this state, shall, annually, on the first day of January, or within thirty days thereafter, prepare, under oath, and deposit in the office of the superintendent of insurance a statement of the condition of such company on the thirty-first day of December then next preceding, exhibiting the following facts and items, and in the following form, namely:

First: The amount of the capital stock of the company, specifying the amount paid and unpaid.

Second: The property or assets held by the company, specifying:

1. The value of the real estate owned by such company, where it is situated and the value of buildings thereon.

2. The amount of cash on hand and deposited in banks to the credit of the company, specifying in what banks the same is deposited.

3. The amount of cash in the hands of agents and in course of transmission.

4. The amount of loans secured by bonds and mortgages, which are first liens on real estate, and on which there is less than one year's interest due.

5. The amount of loans on which interest has not been paid within one year.

6. The amount due the company on which judgments have been obtained and the cash value thereof.

7. The amount of stocks in this state, the United States, of any city of this state, and of any other stocks owned by the company, specifying the amount, number of shares, and the par and market value of each kind of stock.

8. The amount of stock held as collateral security for loans with the amount loaned on, and the par and market value of each kind of stock.

9. The amount of unpaid assessments on stock, premium notes or contingent liabilities.

10. The amount of interest due and unpaid and the amount of interest accrued but not due.

11. The amount of premium notes or contingent liabilities on which policies are issued.

12. The number of policies in force.

13. The amount insured under all policies in force.

14. The amount of premiums received thereon.

15. The amount and description of all other assets.

Third: The liabilities of the company, specifying:

1. The amount of losses due and unpaid.

2. The amount of claims for losses resisted by the company.

3. The amount of losses incurred during the year, including those claimed and not due, and those reported to the company upon which no action has been taken.

4. The amount of dividends declared and due and remaining unpaid.

5. The amount of dividends either cash or scrip, declared but not due.

6. The amount of money borrowed and the security given for the payment thereof.

7. The amount required for reinsurance, being in stock companies a sum equal to fifty per cent. of the whole amount of premiums, received and receivable on unexpired risks and policies running one year or less from date of policy and a pro rata amount of all premiums, received and receivable, on unexpired risks and policies running more than one year from date of policy; and in mutual companies a sum equal to fifty per cent. of the cash premiums on unexpired risks and policies running one year or less from date of policy and a pro rata amount of all cash premiums on unexpired risks and policies running more than one year from date of policy. Provided that all companies shall be charged the full amount of premiums, received and receivable, on all unexpired ocean marine risks.

8. The amount of all other existing claims against the company.

Fourth: The income of the company during the preceding year, specifying:

1. The amount of cash premiums received.

2. The amount of notes or contingent assets received for premiums.

3. The amount of interest money received.

4. The amount of income received from other sources.

Fifth: The expenditure during the preceding year, specifying:

1. The amount of losses paid during the year, stating how much of the same accrued prior and how much subsequent to the date of the preceding statement, and the amount at which losses were estimated in each preceding statement.

2. The amount of dividends paid during the year.

3. The amount of expenses paid during the year, including commissions and fees to agents and officers of the company.

4. The amount paid for taxes.

5. The amount of all payments and expenditures.

6. Amount of scrip dividend declared.

Every mutual fire insurance company created by or organized under any general or special law or act, and doing business in Ohio under any law of this state, upon or without the premium note plan, which shall, by its policy, by-laws or published statements of its financial affairs, claim the benefit of the guarantee fund, or the contingent liability of its policy holders, as provided for in section 3634 of the Revised Statutes, as now in force, shall be held as having organized under the laws of this state as now in force, and be governed by all the provisions thereof as applicable to such companies; and every such mutual fire insurance company that shall neglect or refuse to make and forward to the superintendent of insurance such annual report of its affairs as is required by law, or shall

refuse to allow or permit the superintendent of insurance free access to its books and papers, and investigate the financial standing of such companies, the charter of every such company organized under the laws of this state as aforesaid, and so neglecting and refusing, shall thereby become forfeited, and the said superintendent of insurance shall proceed without delay to bring the affairs of such company to a close. [1904, April 26; 91 v. 211; 90 v. 159; 88 v. 308; 85 v. 273, 276; Rev. Stat. 1880; 70 v. 147, § 18; (S. & S. 211).]

See note to § 3634.

See § (3691—5) as to reports of companies insuring their members against loss, by death, of domestic animals.

Sections 3654, 3655 apply to charters granted before the present constitution and are valid: State ex rel. *v.* Eagle Ins. Co., 50 O. S. 252; Eagle Ins. Co., *v.* Ohio, 153 U. S. 446, 453.

Sec. 3655. [Special report required of certain insurance companies; penalty.] The statement of any such company, the capital of which is composed in whole or in part of notes, shall, in addition to the foregoing, exhibit the amount of notes which originally formed the capital, and also what proportion of such notes is still held by the company and considered capital; and every company organized under any law of this state which fails to make and deposit such statement, or to reply to any inquiry of the superintendent, with respect to such statement, shall be subject to a penalty of five hundred dollars, and an additional five hundred dollars for every month that it continues thereafter to transact any business of insurance, to be recovered by action in the name of the state, and, on collection, paid into the state treasury for the benefit of the state common school fund; and the attorney general, on the request of the superintendent of insurance, shall institute such action against any company so delinquent, in the court of appropriate jurisdiction in Franklin county, or in the court of appropriate jurisdiction of the county in which said company is located or has its principal place of business, as he prefers. [1887, January 21: 84 v. 5; 83 v. 416; Rev. Stat. 1880; 69 v. 140, § 10 (§ 19); (S. & S. 212).]

The act of 83 v. 416, about which there seems to be some question as to its having been regularly enacted, is identical with 84 v. 5, as above given.

Sec. 3656. [Foreign companies must obtain license of superintendent.] No company, association or partnership, incorporated, organized or associated under the laws of any other state of the United States, or of any foreign government, for any of the purposes mentioned in this chapter, which does a banking or any other kind of business in connection with insurance, except surety companies which shall be admitted to guarantee the fidelity of persons holding places of public or private trust who may be required to or do in their trust capacity receive, hold, control and disburse public or private moneys or property, and guarantee the performance of contracts other than insurance policies and execute and guarantee bonds and undertakings

required or permitted in all actions or proceedings, or by law allowed, shall directly or indirectly, transact any business of insurance in this state, nor shall any company, association or partnership mentioned in this section do any such business in this state until it procures from the superintendent a certificate of authority so to do; nor shall any person or corporation act as agent in this state for any company, association or partnership mentioned in this section directly or indirectly, either in procuring applications for insurance, taking risks or in any manner transacting the business of insurance, until it procures from the superintendent a license so to do, stating that the company, association or partnership has complied with all the requirements of this chapter applicable to such company, and depositing a certified copy of such license in the office of the recorder of the county in which the office or place of business of such agent or agents is established; nor shall any company, association or partnership organized under the laws of any other state, take risks or transact business of insurance in this state, directly or indirectly, unless possessed of the amount of actual capital required by similar companies formed under the provisions of this chapter, nor unless the capital stock of the company is paid up and invested as required by the laws of the state where it was organized, and if a live stock insurance company, until it has deposited in such state or in this state, for the benefit of its policy holders, securities approved by the insurance department of such state in an amount equal to one-fourth of its entire capital stock; but if the company is a mutual fire insurance company it shall have actual cash assets of the same amount and description as required of mutual fire insurance companies of this state, after organization, invested as required by the law of the state where such company was organized, and such companies must have either premium notes or contingent liability of the same amount as is required of similar fire insurance companies of this state, which contingent liability may be either in writing or be expressed in the policies issued by such company. [1904, April 22; 91 v. 139; 88 v. 340; 75 v. 572, § 20; 70 v. 147, § 1.]

See § 282.

The loan, by a foreign insurance company, of its money on a note and mortgage, is not in violation of the provisions of this section, which forbid such an insurance company from engaging in the business of banking: Bank *v.* Insurance Co., 41 O. S. 1.

A mutual fire insurance company organized under the laws of another state, but similar to domestic fire insurance companies, which has at least fifty thousand dollars in premium notes, on which at least ten thousand dollars in cash has been paid before commencing the business of insuring, may, so far as capital is concerned, be admitted to transact business within this state: State ex rel. v. Moore, 42 O. S. 103.

It is within the province of the superintendent, in considering the application of an insurance company for admission to transact business within this state, to inquire into its financial soundness, and if upon such inquiry, made in good faith, he is not satisfied, he is vested with discretion to refuse such admission, and his exercise of such discretion will not be controlled by mandamus: *Ib.*

He has no power, however, in the exercise of a mere arbitrary discretion, to refuse such admission: *Ib.*

This section applies to an association of individuals not incorporated: State ex rel. *v.* Ackerman, 51 O. S. 163.

County recorders may charge fee for filing copies of licenses to agents of foreign insurance companies. (Atty. Gen. opinion, March 19, 1902.)

Sec. 3657. [The waiver companies must file.] Any such company desiring to transact any business by an agent in this state, shall file with the superintendent a written instrument, duly signed and sealed, authorizing any agent of the company in this state to acknowledge service of process in this state for and in behalf of the company, consenting that service of process, mesne or final, upon any such agent, shall be taken and held to be as valid as if served upon the company according to the laws of this or any other state or country, waiving all claim or right of error by reason of such acknowledgment of service, and consenting that suit may be brought against it in the county where the property insured was situate, or where the same was insured, or where the application for insurance was taken, and that service of process made therein by the sheriff of such county, by sending a copy thereof by mail, addressed to the company at the place of its principal office located in the state where it was organized, or, if it is a foreign company, to such company at the place of its principal office in the United States, at least thirty days prior to taking judgment in such suit, shall be as valid as if personally made upon the company according to the laws of this state, or any other state or government, and that if suit be brought against it after it ceases to do business in this state as aforesaid, and there be no agent of the company in the county in which suit is brought upon whom service of process can be had, service upon it may be had by the sheriff sending a copy thereof, mailed as aforesaid, and within the time aforesaid; but the sheriff's return shall show the time and manner of such service. [1904, April 22; 75 v. 572, § 20.]

What service is required upon a foreign insurance company, and upon what causes of action it may be sued in this state: Handy v. Insurance Co., 37 O. S. 371.

Service by mailing, as herein provided, held good: Mohr & Mohr Co. *v.* Firemen's Ins. Co. (Ham. Dist. Court), 10 W. L. B. 82.

Sec. 3658. [Must also file statement.] Every such company, association, or partnership shall also file with the superintendent a certified copy of its charter, or deed of settlement, together with a statement, under the oath of its president or vice-president, or other chief officer, and the secretary of the company, stating the name of the company, the place where it is located, and the amount of its capital, with a detailed statement of the facts and items required from the companies organized under the laws of this state by sections *thirty-six hundred and fifty-three* and *thirty-six hundred and fifty-four*; and they shall also file with the superintendent a copy of their last annual report, if any was made, under any law of the state by which it was incorporated. [75 v. 572, § 20.]

Sec. 3659. [Revocation of license of foreign insurance company other than life.] If any such company, association or partnership doing business within this state makes an application for a change

of venue, or to remove any suit or action wherein such company has been sued by a citizen of this state, now pending, or hereafter commenced in any court of this state, to the United States district or circuit court, or to any federal court, or shall enter into any compact or combination with other insurance companies, or shall require their agents to enter into any compact or combination with other insurance agents or companies, for the purpose of governing or controlling the rates charged for fire insurance on any property within this state, or for the purpose of governing or controlling the rates per centum or amount of commission or compensation to be allowed agents for procuring contracts for fire insurance on any property within this state (provided that nothing herein shall prohibit one or more of such companies from employing a common agent or agents to supervise and advise of defective structures, suggest improvements to lessen the fire hazard, and to advise as to the relative value of risks), the superintendent of insurance shall forthwith revoke and recall the license or authority to it to do or transact business within this state, and no renewal of authority shall be granted to it for three years after such revocation; and it shall thereafter be prohibited from transacting any business in this state until again duly licensed and authorized. [94 v. 165; 88 v. 485; 82 v. 231; Rev. Stat. 1880; 75 v. 572, § 20.]

Sec. 3660. [Certain companies must make deposit.] A company incorporated by or organized under the laws of a foreign government shall deposit with the superintendent of insurance, for the benefit and security of its policy holders residing in the United States, a sum not less than one hundred thousand dollars in stocks or bonds of the United States, or the state of Ohio, or any municipality or county thereof, which shall not be received by the superintendent at a rate above their par value; the stocks and securities so deposited may be exchanged from time to time for other like securities; so long as the company so depositing continues solvent and complies with the laws of this state, it shall be permitted by the superintendent to collect the interest or dividends on such deposits; and for the purposes of this chapter the capital of any foreign company doing fire insurance business in this state shall be deemed to be the aggregate value of its deposits with the insurance or other departments of this state and of the other states of the United States, for the benefit of policy holders in the United States, and its assets and investments in the United States certified according to the provisions of this chapter; but such assets and investments must be held within the United States and invested in and held by trustees, who must be citizens of the United States, appointed by the board of directors

of the company and approved by the insurance commissioner of the state where invested, for the benefit of the policy holders and creditors in the United States; and the trustees so chosen may take, hold and convey real and personal property for the purpose of the trust, subject to the same restrictions as companies of this state. All property and investments, cash and bank deposits and premiums in course of collection and agents' balances actually owned and held in the United States may be admitted as assets of such company of a foreign country doing insurance business other than life, provided investments and assets of similar character are allowed and admitted as such, by the laws of the state in which the company has its head office, to companies organized in such state doing similar business therein. [1904, April 22; 91 v. 40; 70 v. 147, § 21; (S. & S. 212).]

As to procedure for collecting claims from such funds, see § (281—1) et seq.

Sec. 3661. [All foreign companies must make annual statements.] Every company, other than a life company, organized by act of congress, or under the laws of any other state or government, shall, annually, at the time, and in the form and manner, required of similar companies organized under the laws of this state, file a statement of its condition and affairs in the office of the superintendent of insurance; any company organized under or incorporated by any foreign government shall also furnish a supplementary statement for the year ending on the preceding thirty-first day of December, verified by the oath of the manager of such company residing in the United States, which shall comprise a report of its business and affairs in the United States, as required from companies organized in this state, together with any other information that may be required by the superintendent of insurance, and if such annual statement be satisfactory evidence to the superintendent of insurance of the solvency and ability of such company to meet all its engagements at maturity, and that the deposit is maintained as hereinbefore provided, he shall issue renewal certificates of authority to the agents of the company, certified copies of which shall be filed in the recorder's office of each county wherein an agency is located, during the month of January in each year, or within sixty days thereafter, which certificates shall be the authority of such agents to issue new policies in this state for the ensuing year. [69 v. 140, § 22; (S. & S. 213).]

Sec. 3661*a*. [Fire insurance company to include in advertisement only assets admitted by superintendent of insurance.] No fire insurance company, organized under the laws of this state, or admitted to do business in this state, shall, in any public advertisement, card, or circular, include in any statement of assets, any item

of value, of a class or character not admitted by the superintendent of insurance of this state in the annual reports of said companies. And every such advertisement, card, or circular, containing a statement of assets, shall, in all cases contain also a full statement of all the liabilities of said company, including the reinsurance reserve, which in no case shall be less than that required by section *thirty-six hundred and fifty-four*, Revised Statutes. [1904, April 25; 1880, April 12: 77 v. 185.]

Sec. 3661*b*. [**Penalty.**] Any violation of this act, after the second notice from the superintendent of insurance of this state, shall render such company liable to a fine of one thousand dollars ($1,000), and each subsequent violation to a similar fine, to be recovered for the benefit of the common school fund of the county, in an action to be instituted by the prosecuting attorney in the name of the state of Ohio, against said company. [1880, April 12: 77 v. 185, 186.]

Sec. 3662. [**Companies must apply dividends to stock notes.**] Every company heretofore organized under any law of this state, for any of the purposes mentioned in this chapter, which has not called in the whole amount of its subscribed capital stock, whether the unpaid balance of such capital is secured by indorsed notes or otherwise, shall retain from each and every dividend declared to its stockholders, their heirs or assigns, fifty per cent. of such dividend, and apply the amount so withheld as a credit upon the balance remaining unpaid on the shares of such stockholders, until such balance shall be fully paid; and the dividends, from time to time so credited, with the capital previously paid in, shall be invested by the company in the manner required by section *thirty-six hundred and thirty-seven*; but if the dividends so credited did not, by the first of January, 1878, equal such balance in full, such company shall hereafter retain the whole amount of any and every dividend declared to its stockholders, their heirs or assigns, and shall credit and invest the same as aforesaid, until the whole subscribed capital, not less in any case than one hundred thousand dollars, shall be paid up and invested, and any company which violates any of the provisions of this section shall thereby forfeit its charter. [70 v. 147, § 23.]

Sec. 3663. [**Lien of mutual companies for premium notes.**] All buildings insured by any mutual company shall be pledged to such company, together with the right and title of the assured in the lands upon which they are situate, to the amount of the premium note or contingent liability, and the company shall have a lien thereon to the amount of such note or liability, but the lien of the company shall not take effect until the company

files with the recorder of the county in which the property insured is situate, a certificate, stating the date, number, and amount of premium note, or contingent liability, and such a description of the property insured as will enable any person readily to identify the same; the recorder shall record and index the certificate in his book of liens, for which he shall receive the sum of fifty cents; and all liens heretofore acquired by any such company shall continue in force under this chapter. [Passed April 14, 1888; took effect July 1, 1888: 85 v. 273, 278; Rev. Stat. 1880; 69 v. 140, § 24.]

See note to § 3634.

Sec. 3664. [**Insured may require fire policy to be canceled.**] Any fire insurance company doing business under the laws of this state which hereafter issues policies of insurance covering any property located in this state, and on such policies receives from the persons insured either cash payments of premium, or notes subject to assessment for payment of losses, or notes for the installments of premium, shall be required to insert in every policy so issued an obligation to cancel the policy at any time, upon the written request of the person insured, on conditions as provided in the following five sections. [75 v. 88, § 1.]

Sections 3664 to 3667 apply to cancellation on request of the insured, and not to those by the company's sole volition: Ins. Co. *v.* Brecheisen, 50 O. S. 542.

Sec. 3665. [**Rates for cancellation of cash policies.**] When a policy issued on the cash plan is canceled, in accordance with the provisions of the preceding section, the companies so issuing may retain customary short rates, as now established and charged by companies doing a cash business, for the time the policy has been in force, and return to the insured the unearned premium on the policy for unexpired time. [75 v. 88, § 2.]

Sec. 3666. [**Rates for policies of mutual companies.**] When policies issued on the mutual plan are canceled, as provided in section *thirty-six hundred and sixty-four*, the companies so issuing must surrender to the insured the note or notes received from the insured for premium or payment of losses; such policies shall first be sent to the secretary or agent of the company, and within sixty days after the receipt thereof for cancellation the premium note shall be returned; but the assured must first pay his proportion of all losses which have actually occurred up to the date when the policy was received for cancellation, and the company shall not be liable for any loss under any such policy after it is returned for cancellation. [75 v. 88, § 3.]

Sec. 3667. [**Rates when premium is paid in installments.**] When policies issued on the installment plan are canceled, in accordance with the provisions of section *thirty-six hundred and sixty-four*,

the companies so issuing may collect and receive of the insured customary short rates for the time the policy has been in force, to be computed on the full term of insurance mentioned in the policies as charged by such companies, and on receipt of such short rates must return all installment notes then unpaid, and refund to the insured any premium collected in excess of such short rates. [75 v. 88, § 4.]

Sec. 3668. [Premium notes not negotiable.] When companies doing business under the laws of this state receive notes in consideration of premiums on their policies, they shall be required to insert on the face of each note the following words, to-wit: "It is hereby understood and agreed that this note is not transferable." [75 v. 88, § 5.]

Sec. 3669. [Superintendent to enforce certain provisons.] When it comes to the knowledge of the superintendent of insurance, or any officer having charge of the insurance department of this state, that any provision of the five preceding sections has been violated, he shall at once proceed to make a thorough investigation, and, upon receiving sufficient proof of such violation shall revoke the certificate of authority of the company guilty of such violation. [75 v. 88, § 6.]

Sec. 3670. [Accident insurance companies authorized; deposit of securities for the purpose of doing business in another state.] Companies may be organized for the special purpose of insuring persons against accidental personal injury or loss of life sustained while traveling by railroad, steamboat or other mode of conveyance, and making all and every insurance connected with the accidental loss of life, or personal injury sustained by accident, of every description whatever, and against expenses and loss of time occasioned by sickness or other disability, and on such terms and conditions, and for such periods of time, and confined to such countries and localities, and to such persons, as shall from time to time be provided for in the by-laws of the company; and when any company so organized desires to do business in any other state, by the laws of which, to qualify it therefor, it is required to make a deposit of securities assigned in trust for the benefit of its policy holders with an officer of this state, it shall be, and hereby is made the duty of the state treasurer to receive such deposit, and issue therefor to such company his receipt, giving a pertinent description of said securities and a certificate of the market value of the same, and he shall also issue a like certificate to the superintendent of insurance, who shall place the same on file in his office. Such company shall have the right to exchange said securities for other like securities, in whole or in part, as far as its business may require, and to wholly withdraw the same should it discontinue business in such other state; but all such changes

or withdrawals of securities shall be at once duly certified by the treasurer to the superintendent of insurance. [1885, May 1: 82 v. 210; Rev. Stat. 1880; 62 v. 12, § 1; (S. & S. 230).]

As to procedure for collecting claims from such funds, see § (281—1) et seq.

Sec. 3671. [**How companies may consolidate.**] When any joint stock fire and marine insurance company of this state, heretofore organized, or that may hereafter be organized, determines by a vote of the holders of two-thirds of its stock to consolidate and make joint stock with any other like company or companies engaged in or incorporated for like business, and each of such companies agrees, by the vote aforesaid, to such consolidation, such companies may, by a vote of the holders of a majority of the stock so consolidated, choose and determine under which corporate organization or articles of association of the consolidating companies, and under what name, their future business shall be conducted; upon filing with the superintendent of insurance a certificate of such consolidation, the companies shall from thenceforth become and be consolidated under the corporate organization or articles of association and corporate name thus chosen; and thereupon all franchises, rights, equities, property, and estate, of whatever name or nature, belonging to or vested in either of the consolidating companies, shall immediately, upon and by the act of such consolidation, become the property and estate of and be vested in such consolidated company, and the corporate existence of the consolidating companies shall cease, and be merged in the consolidation from thenceforth; and such consolidated company shall have the exclusive right and power to demand, sue for, collect, convey, and dispose of the rights, equities, property, and estate aforesaid, or any part thereof, under its own name chosen as aforesaid, and all debts, liabilities, and obligations of the consolidating companies shall be assumed and paid by the consolidated company. [70 v. 19, § 1.]

Sec. 3672. [**Distribution of the stock of consolidated company.**] Upon such consolidation of companies the just and true value of each outstanding share of the capital stock of each of the consolidating companies shall, by their respective directors, be ascertained through a suitable valuation of all the assets and liabilities thereof at the time of the consolidation, and new shares of the consolidated company shall be apportioned to each stockholder, equal to the sum so ascertained to be the just and true value of his shares in each or either of the consolidating companies, and the shares thus apportioned shall be substituted for his original shares, and all certificates of shares in the consolidating companies shall be surrendered when the new certificates of the shares so apportioned are issued; but any stock-

holder in either of the companies so consolidating who refuses to agree to such consolidation shall be entitled to receive for the stock by him owned the just market value of the same at the time of such consolidation, to be paid to him previous to such consolidation. [70 v. 19, § 2.]

Sec. 3673. [**Election of directors.**] Immediately upon the consideration [consolidation] of such companies the directors of the several companies so consolidating shall proceed to elect, from their members, the directors for the consolidated company, who shall serve until their successors are elected and qualified. [70 v. 19, § 3.]

Sec. 3674. [**Capital stock limited.**] The capital stock of such consolidated company may be equal to, but shall not, by virtue of such consolidation, exceed, the aggregate authorized capital of the consolidating companies. [70 v. 19, § 4.]

Sec. 3675. [**Certificate of consolidation must be filed with secretary of state.**] Within thirty days after such consolidation a certificate, setting forth the fact of the consolidation, and the name and organization adopted thereby, shall be filed in the office of the secretary of state. [70 v. 19, § 5.]

Secs. 3676-3682. [*Repealed* 1880, April 17: 77 v. 317. Former statutes: Rev. Stat. 1880; 53 v. 113; 55 v. 144; (S. & C. 353-355).]

Sec. 3683. [**Examination of mutual fire companies.**] The court of common pleas in each county in which the office of any mutual fire insurance company is situate shall, on the application of any three or more persons interested, appoint one or more suitable persons, resident in such county, to make a thorough and careful examination into the affairs and condition of such company; the persons so appointed shall have power to require the production of all books and papers belonging to such company, or pertaining to its business, and to examine under oath all the officers, servants, or agents of the company, or any other person, touching its affairs and condition, which oath may be administered by any person appointed to make the examination, and they shall report thereon to the court, at its next regular term, in which they shall set forth in full the condition of the company, and transmit a copy of such report to the superintendent of insurance forthwith; and such examiners shall each receive two dollars per day for the time actually employed in making the examination and report, to be paid out of the treasury of the company examined; but such examination shall not be had oftener than once in six months. [56 v. 37, § 1; S. & C. 353.]

Sec. 3684. [**Persons refusing to appear and testify are in contempt.**] If any such officer, servant, agent, or other person, fail or refuse to appear before such examiners, or refuse to testify, or to

produce before them any book or papers in his possession, and required to be produced, such failure or refusal shall be deemed a contempt, and shall forthwith be reported to such court, which shall punish the person in contempt in the same manner and to the same extent as though such contempt had been committed against the court. [56 v. 37, § 2; S. & C. 353.]

Sec. 3685. [**Certain bonds may be approved by probate judge.**] Any insurance company which, by the terms of its charter, is required to have its official bonds approved by a judge of the court of common pleas, may, at its option, have the same approved by the probate judge of the county in which the office of the company is located. [54 v. 17, § 1; S. & C. 363.]

Sec. 3686. [**Mutual protection associations authorized.**] Any number of persons of lawful age, residents of this state, or residents of an adjoining state and owning insurable property in this state, not less than ten in number, may associate themselves together for the purpose of insuring each other against loss by fire and lightning, cyclones, tornadoes or wind-storms, hail-storms and explosions from gas, on property in this state; and may make, assess and collect upon and from each other such sums of money, from time to time, as may be necessary to pay losses which occur by fire and lightning, cyclones, tornadoes, wind-storms, hail-storms and explosions from gas to any member of such association, and the assessment and collection of such sums of money shall be regulated by the constitution and by-laws of the association. [1904, April 22; 93 v. 335; 86 v. 377, 380; 82 v. 71; 81 v. 185; Rev. Stat. 1880; 74 v. 66, § 1.]

For "an act to provide for the incorporation and regulation of companies for insuring their members against loss, from death, of domestic animals," etc. (86 v. 377), see §§ (3691—1) to (3691—12).

These sections authorize such assessments to be made on members as may be necessary to pay losses which occur to members, and to pay incidental expenses; but any plan contemplating a profit or dividend is unauthorized. No member can be assessed for losses occurring prior to the time he became a member, or subsequent thereto. An agreed annual deposit in advance cannot take the place of the assessments levied upon each member to pay losses, nor can a policy be declared forfeited for the non-payment of such deposit. It is a misapplication of trust funds to purchase the assets of another like corporation and unnecessary real estate, or to apply the same to losses of the members of said like corporation: State *v.* Monitor Fire Ass'n, 42 O. S. 555.

Non-residents of the state cannot be received as members or directors in companies organized under §§ 3686 to 3690, nor can the company do the business defined in § 3634: State ex rel. *v.* Man. Mut. Fire Ass'n, 50 O. S. 145.

The loss is not a debt for which the trustees are personally liable: Man. Fire Ass'n *v.* Lynchburg Drug Mills, 8 C. C. 112; 1 O. D. 364.

Such association cannot classify risks and have fixed rates. (Atty. Genl. opinion, February 26, 1895).

Assessments must be for losses and expenses previously incurred, and liability of members cannot be limited. (Atty. Genl. opinion, February 26, 1895).

Such association may classify risks. (Atty. Genl. opinion, Oct. 5, 1901).

Sec. 3687. [**Certificate of organization.**] Such persons shall make and subscribe a certificate setting forth therein:

First—The name by which the association shall be known.

Second—The place which shall be regarded as its center or business office.

Third—The object of the association, which shall only be one or more of the objects set forth in section *thirty-six hundred and eighty-six* of the Revised Statutes, and to enforce any contract which may be by them entered into, by which those entering therein shall agree to be assessed specifically for incidental purposes and for the payment of losses which occur to its members. The kinds of property proposed to be insured and the casualties specified in said section 3686 proposed to be insured against shall be specified in such certificate. [1904, April 22; 1889, April 15: 86 v. 377, 380; 82 v. 71, 72; 81 v. 185; Rev. Stat. 1880; 74 v. 66, § 2.]

See reference under § 3686.

Sec. 3688. [**When certificate to be filed.**] The certificate shall be filed in the office of the secretary of state, and a copy thereof, duly certified by the secretary of state, shall be evidence of the existence and due incorporation of the association for the purposes therein named. [74 v. 66, § 3.]

Sec. 3689. [**Election of officers; powers.**] When such certificate is so filed, and a copy thereof so certified forwarded to the association, the persons named therein shall elect their directors, and a president, secretary, and treasurer, and such other officers as may be necessary for the complete performance of all the business and objects of the association herein provided, to serve for one year; and such officers shall thereafter be chosen in such manner, and at such time as shall be fixed upon in the constitution; but directors shall not be chosen for a longer period than three years; and such association so organized shall be known and held to be a body corporate for all the purposes aforesaid, and may sue and be sued, and plead and be impleaded, in all courts of law and equity, but in no instance shall the power to insure against losses by fire or tornadoes be exercised to other than members of the association. [1886, April 30: 83 v. 106, 107; Rev. Stat. 1880; 74 v. 66, § 4.]

Sec. 3690. [**Certain insurance companies must adopt constitution and by-laws; official statement to be made to superintendent of insurance.**] Every such association shall adopt such constitution and by-laws not inconsistent with the constitution and laws of this state or of the United States as will, in the judgment of its members, best subserve the interests and purposes of the association; and all persons who sign such constitution shall be considered and held to be members of the association, and shall be held in law to comply with all the provisions, and requirements of the association. Before granting any insurance, such association shall file with the superintendent of insurance a copy of its articles of incorporation duly certified to by the secretary of state, a copy of its constitution and by-laws and forms of certificates of membership or insurance, and if the super-

intendent find that the association has been duly organized and has complied with the law, he shall issue to it his certificate reciting that it has complied with the law, which certificate shall be the authority of the association to commence business and grant insurance. Upon filing its annual statement, the superintendent shall, annually, issue a renewal of such certificate to such association if he find the association has complied with the law. For each such certificate and renewal every association shall pay to the superintendent for use of the state, five dollars, and the association shall annually upon receipt of same, publish such certificate or renewal in a newspaper published and of general circulation in the county of its center or business office, as prescribed for the publication of certificates defined in section *two hundred and eighty-four* of the Revised Statutes, which publication shall be in lieu of the publication required by said section *two hundred and eighty-four;* and the president or vice president and secretary of every such association shall annually on the first day of January, or within thirty days thereafter, prepare under oath and deposit in the office of the superintendent of insurance a statement of the condition of such association on the thirty-first day of December then next preceding, exhibiting such facts as are enumerated in section *thirty-six hundred and sixty-four* (3654) of the Revised Statutes, and applicable to such associations, and such other information necessary to reveal the financial condition of such association as the superintendent may require, in a printed form to be by him supplied to such association for that purpose, and every such association which fails to make and deposit such statement or to reply to any inquiry of the superintendent, shall be subject to a penalty of five hundred dollars and an additional five hundred dollars for every month that it continues thereafter to transact any business of insurance. [1904, April 22; 1883, April 19: 80 v. 197; Rev. Stat. 1880; 74 v. 66, § 5.]

(3690—1) [**Mutual fire insurance associations authorized to organize as companies.**] Any mutual fire insurance association organized under section 3686, now doing business and now having the number of policies and amount of insurance in force and the amount of assets required in order to organize a mutual fire insurance company, may reorganize as such mutual fire insurance company in the following manner: The board of trustees of such association shall give notice, by publication in a newspaper of general circulation, and published in the county wherein its principal office is situated, at least three consecutive weeks before such application be made, of their intention to so organize; and shall thereupon make application to the superintendent of insurance respecting their desire to assume the requirements of all the laws governing mutual fire

insurance companies organized and doing business under the laws of Ohio, setting forth the amount of insurance carried, the number of policies in force, the amount of its assets and liabilities; and if said superintendent of insurance shall be satisfied, by an examination, or otherwise, of the condition of such association, that at the date of the passage of this act it possessed the required amount of assets, and the number and amount of policies in force required to organize a mutual fire insurance company, he shall so certify, upon a certificate of incorporation, containing the requisite statements required to incorporate a mutual fire insurance company, which certificate, after having been duly executed, shall be delivered to the secretary of state, who shall record the same, and issue his certificate of incorporation as in other cases for change of name, capital or location of an incorporated company, charging only such fees therefor as authorized by law in other cases for change in capital or location of company. [87 v. 88.]

(3690—2) **[Rights of policy holders; how affected.]** Thereafter the business of such fire insurance association shall be conducted as and be subject to all laws governing mutual fire insurance companies; and all members of said association shall be members of said mutual fire insurance company, to the time of the expiration of [or] cancellation of their policies, and entitled to all the benefits as such, precisely as if original members of such company, without exchanging policies or contracts, and entitled to all the benefits as members of said company precisely as if original members of said company. [87 v. 88.]

(3690—3) **[Policies; by-laws, etc.]** After such change in the plan of insurance by such association, and the organization of such mutual fire insurance company, all policies thereafter issued shall be in the name and by the authority of such mutual fire insurance company, and the policies theretofore in force, and the by-laws, rules and regulations of such association, if not in conflict with the laws governing mutual fire insurance companies, shall be and remain in full force and effect until the same shall have terminated or been lawfully changed by said company or its board of directors, as authorized by law. [87 v. 88.]

Sec. 3691. **[Cellar and foundation not considered part of structure in settling loss.]** The cellar and foundation walls shall not be included or considered a part of the building or structure in settling losses, any thing in the application or policy to the contrary notwithstanding.

This provision was probably adopted in the first instance in the Revised Statutes of 1880.

A boiler and engine may be a structure: Ins. Co. *v.* Luce, 11 C. C. 476; 5 O. D. 310.

MUTUAL COMPANIES FOR INSURING ANIMALS.

(3691—1) **Sec. 1. [Mutual protective association.]** *Be it enacted by the General Assembly of the State of Ohio,* That any number of persons of lawful age, residents of this state, not less than five, may associate themselves together for the purpose of becoming a body corporate, and may insure themselves, and any person becoming a member of such incorporation, in accordance with the rules and regulations of such corporation, against loss, from death, of domestic animals, and may assess and collect, upon and from each other, such sums of money, from time to time, as may be necessary to pay losses which occur, from death of domestic animals, to any member of such incorporation; and incidental expenses, and the assessments and collections of such sums of money shall be regulated by the constitution and by-laws of the corporation. [1889, April 15: 86 v. 377.]

(3691—2) **Sec. 2. [Certificate of organization.]** Such persons shall make and subscribe a certificate, setting forth therein—

1st. The name by which the corporation shall be known.

2d. The place which shall be chosen as its principal office.

3d. The object of the corporation, which shall only be to enable its members to insure each other against loss from death of domestic animals, and to enforce any contract which may be by them entered into, whereby they specifically agree to be assessed for the payment of losses and incidental expenses.

4th. Shall acknowledge the signing of such certificate before a notary public, or other officer authorized to take the acknowledgments of deeds and mortgages. [1889, April 15: 86 v. 377, 378.]

(3691—3) **Sec. 3. [Certificate to be filed with secretary of state.]** The certificate shall be filed in the office of the secretary of state, and a copy thereof, duly certified by the secretary of state, shall be evidence of the existence and due incorporation of such company for the purposes therein named. [1889, April 15: 86 v. 377, 378.]

(3691—4) **Sec. 4. [Election of officers.]** When such certificate is so filed, and a copy thereof, so certified, forwarded to the company, the persons named therein shall elect their directors, and a president, secretary and treasurer, and such other officers as may be necessary for the complete performance of all the business and objects of the company herein provided for, to serve for one year, or until their successors are duly elected and qualified. Such officers shall thereafter be elected annually, by the members of the association, at such time as shall be fixed upon in the constitution; and such company so organized shall be known and held to be a body corporate, for the purpose aforesaid, and may sue and be sued, and plead

and be impleaded, in all courts of law and equity; but in no instance shall the power to insure against loss by death of domestic animals be exercised to others than the members of the company; and no such company shall receive applications nor issue policies to persons not bona fide residents of Ohio. [1889, April 15: 86 v. 377, 378.]

(3691—5) **Sec. 5. [Constitution and by-laws; annual statement to commissioner of insurance.]** Every such company shall adopt such constitution and by-laws, not inconsistent with the constitution and laws of this state and the United States, as will, in the judgment of its members, best subserve the interest and purposes of the company; and all persons who obtain insurance in such company shall thereby become members thereof, with power to vote at all regular meetings of such members, upon all subjects, and shall be held, in law, to comply with all the provisions and requirements of the company; and the president, or vice president, and secretary of every such company, shall annually, on the first day of January, or within thirty days thereafter, prepare, under oath, and deposit in the office of superintendent of insurance, a statement of the condition of such company on the thirty-first day of December then next preceding, exhibiting such facts as are enumerated in section *thirty-six hundred and fifty-four* of the Revised Statutes of Ohio, and applicable to such companies, and such other information as is necessary to reveal the financial condition and general management of such company, as the superintendent of insurance may require in printed form, to be, by him, supplied to such companies for that purpose; and every such company failing to make and deposit such statement, or to reply to any inquiry of the superintendent, shall be subject to a penalty of five hundred dollars, and an additional five hundred dollars for every month that it continues thereafter to transact any business of insurance, and shall forfeit its right to do the business contemplated by this act, which forfeiture the superintendent shall enforce by proceedings in quo warranto. [1889, April 15: 86 v. 377, 378.]

(3691—6) **Sec. 6. [Examinations by commissioner of insurance.]** The superintendent of insurance may, whenever he may deem it advisable, cause an examination of the affairs of such company or corporation to be made by one or more disinterested persons, at the expense of the company, such expense not to exceed five dollars per day for each person so employed; and if, upon such examination, it shall appear that such company or corporation is exercising powers or franchises contrary to law, the superintendent of insurance shall institute proceedings in quo warranto against the same, and if it be found, in such proceedings, that such company or corporation has exercised powers or franchises contrary to law,

a forfeiture of its right to do business shall be declared. [1889, April 15: 86 v. 377, 379.]

(3691—7) **Sec. 7. [Amount of applications for insurance required before commencing business.]** No company organized under this act shall issue any certificate or policy of insurance until bona fide applications for insurance to the amount of fifty thousand dollars shall have been filed with the secretary of such company, and a statement of such fact sworn to by such secretary and president of such company, filed with and approved by the superintendent of insurance. Nor shall the treasurer of such company receive any money, as such treasurer, until he shall have filed with the superintendent of insurance, payable to the state of Ohio, for the benefit of the members of such company, his bond, in the sum of ten thousand dollars, with security, to be approved by the superintendent. Such bond shall be conditional for the faithful application of all money coming into his hands as such treasurer. [1889, April 15: 86 v. 377, 379.]

(3691—8) **Sec. 8. [When company may commence business.]** When the statement of the secretary and the president, and the bond of the treasurer, provided for by the preceding section, shall have been filed and approved by the superintendent of insurance, the superintendent shall issue, to such company, his certificate, certifying such fact, and such certificate shall constitute the authority of such company to commence business. [1889, April 15: 86 v. 377, 379.]

(3691—9) **Sec. 9. [When charter may be forfeited.]** Should the amount at risk in such company, at any time, become reduced below fifty thousand dollars, such company shall issue no more certificates or policies of insurance until bona fide applications, sufficient to restore such insurance to said amount, shall have been secured, and a sworn statement of such fact shall have been filed with and approved by the superintendent of insurance, and by him certified to the company; and should such company fail to so restore such amount, for the period of six months, then such company shall forfeit its right to do [the] business contemplated by this act; and when the liabilities of such company shall exceed three per cent. of the amount of risk in force, as determined by the last preceding assessment, such company shall be deemed to be insolvent, and to have forfeited its charter; and such forfeiture shall be enforced by the superintendent of insurance by proceedings in quo warranto. [1889, April 15: 86 v. 377, 380.]

(3691—10) **Sec. 10. [Bond of secretary and treasurer.]** The treasurer and secretary of such companies shall give bond for the faithful performance of their duties, to the directors or trustees of

the company, in such sum and with such security as shall be prescribed in the by-laws of the company, the security to be approved by such directors or trustees. [1889, April 15: 86 v. 377, 380.]

(3691—11) Sec. 11. [**Directors.**] The directors or trustees of such company shall, before qualified, take an oath, to be administered by any officer authorized to take acknowledgments of deeds, to faithfully perform the duties required of them as such officers. [1889, April 15: 86 v. 377, 380.]

(3691—12) Sec. 12. [**Statement of secretary and bond of treasurer to be filed with commissioner of insurance.**] Any company or association, organized under sections *three thousand six hundred and eighty-six* and *three thousand six hundred and eighty-seven* of the Revised Statutes of Ohio, as amended February 27, 1885, for the purpose of insuring its members against loss from death of domestic animals, and still doing business, shall, within ninety days after the passage of this act, file the statement, and the treasurer shall file his bond as provided in section *seven* of this act, and, failing so to do, shall forfeit the right to do the business contemplated by this act. [1889, April 15: 86 v. 377.]

An Act to authorize insurance companies to re-insure their risks.

(3691—13) Sec. 1. [**Companies may reinsure their risks.**] *Be it enacted by the General Assembly of the State of Ohio,* That any fire, marine, fidelity, accident, plate-glass, boiler or other insurance company now or hereafter organized or existing under or by virtue of the laws of Ohio shall have authority by and with the consent and approval of the superintendent of insurance to reinsure any and all risks undertaken by it in any company authorized by law to transact a similar class of insurance business in this state, but nothing herein contained shall prevent any such company organized under the laws of this state from reinsuring any risks or fractional parts thereof not situated in this state in any company or companies duly licensed by the superintendent of insurance, or like authority, of the state in which such risks may be located, to transact the business of insurance in such state. [1904, April 26; 1884, April 14: 81 v. 179.]

See §§ 266 and 3597.

CREDIT GUARANTY COMPANIES.

(Sec. 3691—14) Sec. 2. [**Organization.**] Any number of persons, not less than five, may associate and form a company to guarantee and indemnify merchants, manufacturers, traders and those engaged in business, and giving credit from loss and damage by reason of giving and extending credit to their customers and those

dealing with them, by making, acknowledging and filing articles of incorporation pursuant to, and by complying with sections 3588, 3589 and 3590 of the Revised Statutes of Ohio. [91 v. 415, § 1; 95 v. 345.]

(Sec. 3691—15) Sec. 3. [**Capital stock.**] No such company shall be organized with a less capital than one hundred thousand dollars ($100,000), and the whole capital shall, before proceeding to business, be paid in and invested in treasury notes, in stocks or bonds of the United States, in stocks or bonds of the state of Ohio, or of any municipality or county thereof or in mortgages on unincumbered real estate within the state of Ohio, worth double the amount loaned thereon at the time such loan is made. [91 v. 415, § 2; 95 v. 345.]

(Sec. 3691—16) Sec. 4. [**Increase of capital stock.**] Any such company may increase its capital stock as provided in section 3592 of the Revised Statutes of Ohio. [91 v. 415, § 3; 95 v. 345.]

(Sec. 3691—17) Sec. 5. [**Investment of capital; deposit.**] Any such company may invest its capital stock and change such investment as provided in section 3593 of the Revised Statutes of Ohio; but no such company shall commence business until it has made the deposit of securities provided for in said section, which shall be held and controlled by the superintendent of insurance for the purpose and in the manner provided in said section 3593 and in section 3594 of the Revised Statutes of Ohio. [91 v. 415, § 4; 95 v. 345.]

(Sec. 3691—18) Sec. 6. [**Certificate of deposit and of authority to transact business.**] When such company is fully organized and has deposited the requisite amount of securities as hereinbefore provided, together with a certified copy of the papers required by this act, the superintendent of insurance shall, unless he find the name assumed by such company so nearly similar to the name of another company organized in this state as to lead to uncertainty or confusion on the part of the public, furnish such company with a certificate of such deposit and of authority to commence and transact business. [91 v. 415, § 5; 95 v. 345.]

As to procedure for collecting claims from such funds, see § (281—1) et seq.

(Sec. 3691—19) Sec. 7. [**Powers of companies.**] No such company shall undertake any business or risk except as provided in clause 2 of section 3641 and 3641*b* of the Revised Statutes of Ohio, and as herein provided, and such companies shall have the right, power and authority to agree to pay to merchants, manufacturers, dealers and persons engaged in business and giving credit, the debt or debts, or such part thereof as may be agreed upon, owing to them, or which may be thereafter owing to them, and to indemnify them from loss on account thereof in such an amount or per cent. as may

be agreed upon, and to charge and receive therefor such a sum or per cent. as the consideration for such an agreement, guaranty or indemnity, as shall be agreed upon between such corporation and the person guaranteed or indemnified, and to buy, hold, own and take an assignment of any and all claims, accounts and demands so guaranteed, and to hold, own and collect the same, and to enforce the collection thereof by action the same as the original holder and owner thereof might or could do; and such corporation may also guarantee the payment of money for personal services under contract of hiring. Any such corporation may use its capital stock or its funds accumulated in the course of its business to purchase or pay for any claim or demand, the payment of which it has guaranteed; or against the loss of which it has indemnified the holder; and such of its capital stock or accumulated funds as may not be so used shall be invested in the same classes of securities in which the deposit to be made with the superintendent of insurance is required by the provisions of this act to be invested; provided, that when, on account of losses or otherwise, the amount of the funds of any such corporation shall fall below such sum as is required to be deposited by this act, no further guaranty of indemnity shall be issued until the deficiency has been made good. [91 v. 415, § 6; 95 v. 345.]

(Sec. 3691—20) Sec. 8. [**Annual statements.**] The president or vice president of each company organized under this act, or under the laws of any other state, or the general manager for the United States of any company organized for like purposes under the laws of a foreign government, and doing business in this state, shall, annually, on the first day of January, or within thirty days thereafter, prepare under oath and deposit in the office of the superintendent of insurance a statement of the condition of such company on the thirty-first day of December then next preceding, exhibiting the following facts and items, and in the following form, to-wit:

First.—The amount of the capital stock of the company, specifying the amount paid and unpaid.

Second.—The property or assets held by the company specifying:

1. The value of the real estate owned by such company, where it is situated, and the value of the buildings thereon.

2. The amount of cash on hand and deposited in banks to the credit of the company, specifying in what banks the same is deposited.

3. The amount of cash in the hands of agents and in the course of transmission.

4. The amount of loans secured by bonds and mortgages which are first liens on real estate and on which there is less than one year's interest due.

5. The amount of loans on which interest has not been paid within one year.

6. The amount due the company on which judgments have been obtained, and the cash value thereof.

7. The amount of stocks in this state, the United States, of any city in this state, and of any other stocks owned by the company, specifying the amount, number of shares, and the par and market value of each kind of stocks.

8. The amount of stock held as collateral security for loans, with the amount loaned on, and the par and market value of each kind of stock.

9. The amount of unpaid assessments on stock, premium notes or contingent liabilities.

10. The amount of interest due and unpaid, and the amount of interest accrued but not due.

11. The amount of premium notes or contingent liabilities on which policies or bonds of guaranty or indemnity are issued.

12. The number of policies or bonds of guaranty or indemnity in force.

13. The amount of premiums received thereon.

14. The amount and description of all other assets.

15. The amount guaranteed under all policies in force.

Third.—The liabilities of the company, specifying:

1. The amount of losses due and unpaid.

2. The amount of claims for losses resisted by the company.

3. Gross losses in process of adjustment or in suspense, including all reported and supposed losses.

4. The amount of dividends declared and due and remaining unpaid.

5. The amount of dividends, either cash or scrip, declared, but not due.

6. The amount of money borrowed, and the security for the payment thereof.

7. The amount of all other existing claims against the company.

Fourth.—The income of the company during the preceding year, specifying:

1. The amount of cash premiums received.

2. The amount of notes or contingent assets received for premiums.

3. The amount of interest money received.

4. The amount of income received from other sources.

Fifth.—The expenditure during the preceding year, specifying:

1. The amount of losses paid during the year, stating how much of the same accrued prior and how much subsequent to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement.

2. The amount of dividends paid during the year.

3. The amount of expenses paid during the year, including commissions and fees to agents and officers of the company.

4. The amount paid for taxes.

5. The amount of all payments and expenditures.

6. The amount of scrip dividend declared. [91 v. 415, § 7; 95 v. 346.]

(Sec. 3691—21) Sec. 9. [**Requirements of companies of other states.**] Any corporation, company or association organized under the laws of any other state of the United States or of a foreign government to transact a like business as that provided for in this act, may be admitted and licensed to do business in this state; but as a condition precedent to being admitted to, and transacting business in this state, shall comply with the following conditions, to-wit: Deposit with the superintendent of insurance (1) a certified copy of its charter or articles of incorporation; (2) if the applicant be a corporation, company or association organized under the laws of any other state of the United States, a certificate from the insurance commission, commissioner or superintendent of insurance of its own state showing its authority to do such business, also a certificate from said commissioner or superintendent or like authority of it own state, that corporations, companies or associations of this state engaged in a like business, are, upon complying with the laws of said state legally entitled to do business in such state; (3) a statement under oath of its president and secretary, or like officers, or of the general manager for the United States of a company organized under the laws of a foreign government, in the form provided for in this act of its business for the preceding year; (4) a copy of its policy, bond or guaranty, application and by-laws; (5) if the applicant be a corporation, company or association organized under the laws of any other state of the United States, a certificate from the insurance commissioner, superintendent of insurance or other proper officer of its own state, that such company has invested at least one hundred thousand dollars of its assets in the interest paying bonds or stocks of the United States or of this state, or of some other state of the United States, of the market value of one hundred thousand dollars in the city of New York, or in bonds and mortgages on unincumbered real estate in this state, or in the state under the laws of which it is organized, of at least double the value of the amount

loaned thereon; that such securities are held under the laws of such state by such officer for the benefit of all its policy, bond or guaranty holders; and such certificate shall also state the character of the securities held by such officer and their value; (6) a duly certified copy of the resolution of its board of directors or authority, duly acknowledged before a notary public by the general manager for the United States of a company organized under the laws of a foreign government, appointing an attorney in this state upon whom service of summons or other process in all actions begun in this state may be made. [91 v. 415, § 8; 95 v. 348.]

As to procedure for collecting claims from funds deposited with superintendent of insurance, etc., see § (281—1) et seq.

(3691—22) Sec. 10. [**When company from other state exempted from making deposit.**] No deposit in this state shall be required of any corporation, company or association of another state, if such company, corporation or association has made the deposit in its own state, referred to in the last preceding section, and has filed with the superintendent of insurance of this state the certificate mentioned in the last preceding section, as evidence of such deposit; provided, however, that any corporation doing the credit guaranty business in this state, which is incorporated by or organized under the laws of a foreign government, shall make the deposit with the superintendent of insurance of such securities, and in such amount and for the purpose required by section 3660 of the Revised Statutes of Ohio. [91 v. 415, § 9; 95 v. 349.]

(3691—23) Sec. 11. [**Forfeiture of right to do business.**] Any corporation organized under this act, or doing business in this state hereunder, which shall fail or refuse to file a statement or report, shall forfeit its right to do business under this act, which forfeiture the superintendent shall enforce by proceedings in quo warranto; and it is hereby made the duty of the attorney general of the state to institute such proceedings upon his request in writing. [91 v. 415, § 10; 95 v. 349.]

(3691—24) Sec. 12. [**Examination.**] Any such corporation, association or company shall be subject to examination by the superintendent of insurance of this state under and pursuant to the provisions of the laws of this state relative to the examination of life insurance companies. [91 v. 415, § 11; 95 v. 349.]

BURGLARY AND ROBBERY INSURANCE COMPANIES.

(3691—24*a*) Sec. 1. [**Licensing of companies organized for insuring against burglary, robbery, etc.**] That any insurance company organized or incorporated on the mutual plan under the laws of this state [or any other state] for the purpose of insuring against loss or

damage from burglary and robbery or attempt thereat, and securing against the loss of money and securities in course of transportation shall be authorized, admitted and licensed to do business in this state, as hereinafter provided. [94 v. 350.]

(3691—24*b*) **Sec. 2.** [**Requisites for beginning business.**] Before any such company shall be authorized to transact business in this state, except to solicit and receive applications for insurance and portions and premiums thereof, as hereinafter provided, it shall have in force five hundred or more policies on which premiums shall have been paid in cash, or shall be evidence by the written contracts or [of] the policy holders, on which not less than one-fifth of the amount shall have been paid in cash, the cash and contracts for premiums shall amount in the aggregate to a sum not less than one hundred thousand dollars. The premium contracts so held shall constitute a part of the valid assets of the company. [94 v. 351.]

(3691—24*c*) **Sec. 3.** [**Copy of charter, and statement to be filed with superintendent of insurance; what statement shall contain.**] And every such company, association or partnership shall also file a certified copy of its charter, articles of incorporation or deed of settlement, together with a statement under the oath of the president or vice president and secretary of the company for which he or they may act, stating the name of the company and the place where located, a detailed statement of its assets, showing the number of policy holders, aggregate amount of premium contracts, the amount of cash on hand, in bank, or in the hands of agents, the amount of real estate, and how the same is encumbered by mortgage, the number of shares of stock of every kind owned by the company, the par and market value of the same, amount loaned on bond and mortgage, the amount loaned on other securities, stating the kind and amount loaned on each, and the estimated value of the whole amount of such securities, and other assets or property of the company; also stating the indebtedness of the company, the amount of losses adjusted and unpaid, the amount incurred and in process of adjustment, the amount resisted by the company as illegal and fraudulent, and all other claims existing against the company;

[**Foreign company to file last annual report; agent forbidden to transact business when company's reserve is impaired.**] and for a company organized under the laws of any other state, a copy of the last annual report, if any, made under any law of the state by which such company was incorporated and no agent shall be allowed to transact business for any such company who[se] reinsurance reserve, as required by this act, as [is] impaired to the extent of twenty per cent. thereof, while such deficiency shall continue.

[**Agent to procure certificate from superintendent of insurance.**] Nor shall it be lawful for any agent or agents to act for any company or companies referred to in this act, directly or indirectly, in taking risks or transacting the business of burglary and robbery insurance or the insurance of the safe shipment of money and securities, without procuring from the superintendent of insurance a certificate of authority, stating that such company has complied with all the requirements of this act which apply to such companies, and as to companies organized under the laws of any other state there shall be added the name of the attorney appointed to act for the company. [94 v. 351.]

(3691—24*d*) **Sec. 4.** [**Character of business to be conducted in this state.**] Any company organized, admitted and licensed to transact business in this state under this act shall confine its line of business to that stated in the first section of this act, and shall confine its business in this state to banks, bankers, loan companies, trust companies, city and county treasurers, and shall not issue any policy or policies to [any] person, firm or corporation in this state other than banks, bankers, loan companies, trust companies, city and county treasurers.

[**Reinsurance reserve.**] Every such company shall set aside a reinsurance reserve of fifty per cent. of its premiums for unexpired term, whether collected in cash or represented by the obligations of the policy holders, as written in its policies. [94 v. 352.]

(3691—24*e*) **Sec. 5.** [**Liability of policy holders.**] Policy holders of any company organized and admitted to transact business in this state under this act, shall be held liable to pay the membership fee and premium on their insurance as paid or contracted to be paid at the time the policy is taken out, and shall not be held liable for any further or other assessments or claims on the part of the company or its policy holders. The membership fees and premiums agreed upon may be collected in cash at the time the policy is issued or evidenced by written obligation of the policy holder, as may be agreed upon by the company and the policy holder. Such payment or obligation shall be the limit of the liability of the policy holder to the company for premium on their insurance. [94 v. 352.]

(3691—24*f*) **Sec. 6.** [**Appointment of attorney.**] It shall not be lawful for any insurance company, association or partnership incorporated by or organized under the laws of another state of the United States for any of the purposes specified in this act, directly or indirectly, to take risks or transact any business of insurance in this state by any agent or agents in this state, until it shall first appoint an attorney in this state, who shall be the superintendent of in-

surance on whom process of law can be served, and file in the office of the superintendent of insurance a written instrument duly signed and sealed, certifying such appointment,

[**Service of process.**] and any process issued by any court of record in this state, and served upon such attorney by the proper officer of the county in which such attorney may reside or be found, shall be deemed a sufficient service of the process upon such company. [94 v. 352.]

(3691—24*g*) **Sec. 7.** [**Annual statements.**] The statement and evidence of membership, assets and investments required by section three of this act, shall be renewed from year to year in such a manner and form as may be required by said superintendent of insurance with an additional statement of the amount of premiums received in this state during tne preceding year, so long as such agency continues, and the said superintendent of insurance, on being satisfied that the membership, assets, securities and investments remain secure, as hereinbefore mentioned, shall furnish a renewal of the certificate as aforesaid.

[**Revocation of authority of company.**] Any corporation organized under this act doing business in this state hereunder, which shall violate any of the provisions of this act, the superintendent of insurance shall revoke its authority to do business in this state, and no renewal of authority shall be granted to it for a period of one year after such revocation. [94 v. 352.]

AN ACT

Authorizing the superintendent of insurance to issue licenses permitting fire, lightning, explosion, tornado and marine insurance in companies not licensed to transact business in this state.

Be it enacted by the General Assembly of the State of Ohio:

Section 1. The superintendent of insurance may issue licenses to citizens of this state, subject to revocation at any time, permitting the person named therein to procure fire, lightning, explosion, tornado or marine insurance, on property in this state, in insurance companies not authorized to transact business in this state. Each such license shall expire on the thirty-first day of March next after the year in which it is issued, and may be then renewed. For each such license and renewal, the superintendent of insurance shall collect ten dollars, and such licenses and renewals shall be filed with the recorder and published annually in the county where such agent's office is located in the same manner as is required of certificates of compliance by section *two hundred and eighty-four*, Revised Statutes.

Before the person named in such license shall procure any insurance in such companies on any such property, he shall in every case file with the superintendent of insurance his own affidavit and the affidavit of the person, or of the president or secretary of the corporation, owning the property on which the insurance is proposed to be placed, which shall have force and effect one year only from the date thereof, that such owner is unable to procure from companies authorized to do business in this state the amount of insurance necessary to protect said property.

Sec. 2. Each person so licensed shall keep a separate account of the business done under his license, a certified copy of which account he shall forthwith, on procuring or issuing any such policy, file with the superintendent of insurance, showing the amount of such insurance, the name of the owner, brief description and location of the property, gross premium charged, name of company in which the insurance is placed, date of policy and term thereof, and, also, a report in the same detail of all such policies canceled and gross return premiums thereon. Before receiving such license such person shall execute and deliver to the superintendent of insurance a bond in the penal sum of two thousand dollars, payable to the state, with at least two sureties, or a duly licensed surety company approved by the superintendent, and conditioned that the licensee will faithfully comply with all the requirments of this law, and will annually file witn the superintendent of insurance in January, a sworn statement of the gross premiums charged for insurance procured or placed, and the gross premiums on such insurance canceled under such license during the year ending on the thirty-first day of December last preceding, and at the time of filing such statement will pay to the superintendent of insurance an amount equal to five per cent. of the balance of such gross premiums after deducting such return premiums so reported. [Approved April 22, 1904.]

CHAPTER XI*a*.

TITLE II—DIVISION II—PART SECOND.

SALVAGE COMPANIES.

SECTION.
3691—24*h*. Corporations for the purpose of discovering and preventing fires, and saving property and life from conflagration; creation; powers. Superintendent and patrol to be under control of fire department.
3691—24*i*. Powers of such corporations.
3691—24*j*. Biennial meetings of corporation and representatives of insurance companies; object of meeting; assessments upon fire insurance companies for maintenance of corporation.
SECTION.
3691—24*k*. Quarterly statement showing aggregate of premiums received to be filed by insurance companies with corporation.
3691—24*l*. Written demand to be made upon fire insurance companies for statement above provided for; penalty for failing to file such statement.

(3691—24*h*) Sec. 1. [**Corporations may be created for the purpose of discovering and preventing fires and of saving property and life from conflagration; powers of.**] That corporations, not for profit, may be organized under the general corporation laws of this state, and in accordance with the provisions of this act, for the purpose of discovering and preventing fires and of saving property and life from conflagration, with power to provide a patrol of men and a competent person to act as superintendent to discover and prevent fires, with suitable apparatus and equipment to save and preserve property and life at and after fires; and to enable them so to act with promptness and efficiency, full power is hereby given to such superintendent and patrol to enter any building at any time for the purpose of inspection and any building on fire or which may be exposed to or in danger of taking fire from other burning buildings, for the purpose of protecting and saving said building and the property therein, or of removing such property or any part thereof during the fire or from the ruins after the fire;

[**Superintendent and patrol shall be subordinate and under control of fire department.**] provided, however, that nothing in this act shall be so construed as will in any degree lessen, impair or interfere with the powers, privileges, duties or authority of any regular or volunteer fire department organized and maintained by any public authority within the state, but the said superintendent and the members of said patrol, while on duty at a fire, shall in all respects be subordinate to and under the control of the public authority having charge of the extinguishment and prevention of fires; and provided further that no act of the superintendent or the patrol of men shall justify any owner of any building or property in abandoning such building or property. [95 v. 324, April 29, 1902.]

(3691—24*i*) Sec. 2. [**Powers of such corporations.**] In the articles of incorporation of any such corporation shall be set forth the munic-

ipality or other subdivision of the state within which such corporation shall prosecute its business, as provided herein, and thereafter such corporation shall be confined to the municipality or other subdivision, as set forth in said articles; and for the purpose of carrying into effect the powers herein granted, any such corporation shall have authority to provide suitable rooms for the transaction of its business and to that end is hereby authorized to purchase, lease or otherwise acquire and hold such real estate and personal property as may be necessary to fulfill the purposes of its organization. All such corporations shall have power to elect such officers and make such needful by-laws as may not be contrary to the provisions of this act or the constitution or laws of this state or of the United States; and except as herein provided, shall be subject to the general corporation laws of this state. [95 v. 324, April 29, 1902.]

(3691—24*j*) Sec. 3. [**Biennial meeting of corporation and representatives of fire insurance companies.**] Before any corporation organized under the terms of this act shall commence business, and in the month of March of every second year thereafter, there shall be held a meeting of such corporation, of which ten (10) days' previous notice shall be given by inserting the same in at least two newspapers published or of general circulation in the municipality or other subdivision of the state in which the said corporation is organized and established, if there be such newspapers, and if not, by posting notices thereof, at which meeting each insurance company, corporation, association, underwriter, person or persons doing a fire insurance business in said municipality or other subdivision of the state in which the corporation is organized and established, whether members of said corporation or not, shall have the right to be represented and shall be entitled to one vote.

[**Object of such meeting.**] A majority of the whole number so represented shall have power to decide upon the question of sustaining the fire patrol organized by the corporation under the terms of this act and shall fix the maximum amount of expenses which shall be incurred therefor during the fiscal years next to ensue and until the next meeting, as herein provided, which amount shall in no case exceed two (2 per cent.) per centum of the aggregate premiums returned as received, as hereinafter provided in this act,

[**Assessments upon fire insurance companies for maintenance of corporation.**] and the whole of such amount, or so much thereof as may be necessary, may be assessed upon all insurance companies, corporations, underwriters, agents, person or persons who assume risks and accept premiums for fire insurance in said municipality or other subdivision, as hereinbefore mentioned, whether members of

said corporation or not, in proportion to the several amounts of premiums returned as received by each, as hereinbefore provided, and such assessments shall be collectible by and in the name of the said corporation in any court of law in this state having jurisdiction thereof in such manner and at such time or times as the said corporation may determine. [95 v. 325, April 29, 1902.]

(3691—24*k*) **Sec. 4. [Quarterly statement showing aggregate amount of premiums received to be filed by insurance companies with corporation.]** To insure the collection of the assessments hereinbefore provided and in order to provide for the payment of the persons employed by said corporation and to maintain suitable rooms therefor and for the purchase, lease or acquisition of such real and personal property as may be necessary, the same to be determined at the meetings hereinbefore provided, the said corporation is empowered to require a statement to be furnished quarterly by all insurance companies, corporations, associations, underwriters, agents, person or persons of the aggregate amount of premiums received by each for insuring property in the municipality or other subdivision of the state where the said corporation is organized and established for and during the three (3) months next preceding the 31st day of March, the 30th day of June, the 30th day of September and the 31st day of December of each year, which statement shall be sworn to by the president and secretary of the corporation or association, or by the agent or person so acting or effecting such insurance in said municipality or other subdivision, and shall be given to the secretary of the corporation created under the provisions of this act, within ten (10) days after the first days of April, July, October and January of each year. [95 v. 325, April 29, 1902.]

(3691—24*l*) **Sec. 5. [Written demand to be made upon fire insurance companies for the statement above provided for.]** The treasurer or other appointed officer of any corporation organized under this act shall within the ten (10) days aforesaid, by written or printed demand, signed by him, require from every such insurance company, corporation, organization, underwriter, agent or person engaged in the business of fire insurance in the municipality or other subdivision of the state where said corporation is organized and established, the statement hereinbefore provided for. Such demand may be delivered personally at the office of such insurance company, corporation, association, underwriter, agent or person within such municipality or other subdivision, as hereinbefore provided, or at the residence of any officer of such corporation or association, underwriter, agent or person.

[**Penalty for failing to file such statement.**] Any insurance company, corporation or association, or any officer thereof, and any underwriter, agent or person within the municipality or other subdivision in which the said corporation is organized and established, engaged in the business of fire insurance, or of assuming risks and accepting premiums for fire insurance, who fails to comply with the provisions of this act by furnishing the statement herein provided for, shall forfeit for the use of the corporation herein provided the sum of twenty-five ($25.00) dollars for every day he shall so neglect to furnish the same, which amount shall be recovered by the corporation in any court in the state having jurisdiction thereof. [95 v. 326, April 29, 1902.]

Provisions of this chapter unconstitutional. (Atty. Genl. opinion, September 6, 1902).

CHAPTER XIV.

DIVISION VII—TITLE I—PART THIRD.

TO CHANGE NAME.

SECTION.
5852. What names may be changed.
5853. Proceeding to change name of person.
5854. Proceeding to change name of town, village, or hamlet.
5855. [Repealed.]
5856. [Repealed.]
5857. [Repealed.]

Sec. 5852. [**What names may be changed.**] The names of persons, the names of towns, villages, and hamlets, and the names of companies or associations incorporated in this state, may be changed in the manner provided in this chapter. [40 v. 28, § 1; 51 v. 293, § 1; 50 v. 274, § 77; S. & C. 1138; S. & C. 309; S. & C. 317.]

Sec. 5853. [**Proceeding to change name of person.**] A person desiring to change his name may file a petition in the court of common pleas, or in the probate court, of the county in which he resides, setting forth that he has been a bona fide resident of such county for at least one year prior to the filing of the petition, the cause for which the change of name is sought, and the new name asked for; and the court, upon being satisfied, by proof in open court, of the truth of the facts set forth in the petition, that there exists reasonable and proper cause for changing the name of the petitioner, and that notice of the intended application has been given by one publication in a newspaper of general circulation in such county at least thirty days prior to filing of the petition, may order such change of name,

[**Fee of probate judge.**] And the probate judge is authorized to charge for his services in the proceedings, the sum of three dollars, and no more. [92 v. 28; 40 v. 28, § 2; S. & C. 1138.]

Sec. 5854. [**Proceeding to change name of town, village, or hamlet.**] Not less than twelve freeholders of the vicinity may file a petition in the court of common pleas of the county, for the change of the name of any town, village, or hamlet in such county, setting forth the reason why such change of name is desirable, and the name proposed to be substituted; and the court, upon being satisfied by proof, that the prayer of the petitioners is just and reasonable, that notice as required in the last section has been given, that at least three-fourths of the inhabitants of such town, village, or hamlet desire such change, and that there is no other town, village, or hamlet in this state of the same name as that which is prayed for, may order such change of name. [40 v. 28, § 3; S. & C. 1138.]

Sec. 5855. [**Proceeding to change name of corporation.** 51 v. 293, §§ 1, 2; 50 v. 274, § 77; S. & C. 309; S. & C. 317; R. S. of 1880; repealed 95 v. 77, March 31, 1902.]

Sec. 5856. [**Copy of order to be filed, and publication made.** 51 v. 293, § 3; 50 v. 274, § 77; S. & C. 309; S. & C. 317; R. S. of 1880; repealed 95 v. 77, March 31, 1902.]

Sec. 5857. [**Effect of change of name of corporation.** 51 v. 293, § 4; 50 v. 274, § 77; S. & C. 309; S. & C. 317; R. S. of 1880; repealed 95 v. 77, March 31, 1902.]

TAX LAWS

APPLICABLE TO INSURANCE CORPORATIONS.

For additional tax provision applicable to foreign and domestic fire insurance companies for support of the office of State Fire Marshal, see section 409-56 Revised Statutes, *supra.*

Sec. 2744. [**Corporations generally; their returns.**] The president, secretary, and principal accounting officer of every canal or slackwater navigation company, turnpike company, plank-road company, bridge company, insurance company, telegraph company, or other joint stock company, except banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether incorporated by any law of this state or not, shall list for taxation, verified by the oath of the person so listing, all the personal property, which shall be held to include all such real estate as is necessary to the daily operations of the company, moneys and credits of such company or corporation within the state, at the actual value in money, in manner following: In all cases return shall be made to the several auditors of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each township, village, city, or ward therein. The value of all movable property shall be added to the stationary and fixed property and real estate, and apportioned to such wards, cities, villages, or townships, pro rata, in proportion to the value of the real estate and fixed property in said ward, city, village, or township, and all property so listed shall be subject to and pay the same taxes as other property listed in such ward, city, village, or township. It shall be the duty of the accounting officer aforesaid to make return to the auditor of state during the month of May of each year of the aggregate amount of all property by him returned to the several auditors of the respective counties in which the same may be located. It shall be the duty of the auditor of each county, on or before the first Monday of May, annually, to furnish the aforesaid president, secretary, principal accounting officer, or agent, the necessary blanks for the purpose of making aforesaid returns; but no neglect or failure on the part of the county auditor to furnish such blanks shall excuse any such president, secretary, principal accountant, or agent, from making the returns within the time specified herein. If the county auditor to whom returns are made is of the opinion that false or incorrect valuations have been made, or that the property of the corporation or association has not been listed at its full value, or that it has not been listed in the location where

it properly belongs, or in cases where no return has been made to the county auditor, he is hereby required to proceed to have the same valued and assessed: provided, that nothing in this section shall be so construed as to tax any stock or interest in any joint stock company held by the state. [73 v. 139, § 16; (S. & C. 1446).]

Express, telegraph and telephone companies expressly taken out of this section, see § 2778. Also sleeping car companies, see § (2780—13). Also freight line and equipment companies, see § (2780—8).

Listing by insurance company: Farmers' Insurance Co. *v.* La Rue, 22 O. S. 630.
A franchise is not property, and not taxable: Bank *v.* Hines, 3 O. S. 1.
See note to Pomeroy Salt Co. *v.* Davis, Treas., 21 O. S. 555, under § 2734.
That the legislature intended to embrace the capital stock of a company, is too obvious to be misunderstood. No other meaning can be drawn from the language employed, and no other construction is better calculated to do justice: Jones v. Davis, 35 O. S. 477.
See note to Bradley *v.* Bauder, 36 O. S. 28, under § 2730.
Re-insurance is not a "legal *bona fide* debt" within the meaning of § 2730, to be deducted from "claims and demands" due the company: Insurance Co. *v.* Cappeller, 38 O. S. 560.
The exemption from taxation of investments in stocks, provided by the statute, applies only to shares of those corporations which are required to return their capital and property for taxation in the state: This clearly means those corporations which are required to return all, or substantially all, their capital and property. Jones *v.* Davis, 35 O. S. 474, approved and followed: Sturges *v.* Carter, 114 U. S. Supreme Court 522. See note to same case under § 2746.
Cited: Express Co. *v.* State, 55 O. S. 80.

Sec. 2745. [**Foreign insurance companies; annual statements.**] Every insurance company, incorporated by the authority of any other state or government, shall, in its annual statement to the superintendent of insurance, set forth the gross amount of premiums received by it in the state during the preceding calendar year, without deductions for commissions, return premiums or considerations paid for reinsurance, or any deductions whatever; and shall, also, therein set forth, in separate items, return premiums paid for cancellations and, also, considerations received from other companies for reinsurances in this state, during such year.

[**Payment of tax to superintendent of insurance.**] The superintendent of insurance shall examine such report of every such company, and if he finds the same correct, shall, prior to the month of November in each and every year, compute an amount of two and one-half per centum on the balance of such gross amount after deducting such return premiums and considerations received for reinsurances as shown by the next preceding annual statement, and charge the same to such company as a tax upon the business done by it within said state for the period as shown by said annual statement; and shall at said time, mail to the last known address of the head office of such company, a statement of the amount so charged against said company, which amount such company, shall, in the month of November next succeeding pay to the superintendent of insurance at his office.

[**Penalty for failure to pay tax or make true statement.**] If any such company fail or refuse to pay said tax, after a statement thereof has been made and mailed to such company as herein provided; or if

the statement required to be made by it under this section is false or incorrect, the superintendent of insurance may revoke the license of such company doing business in this state; and shall upon such failure or refusal to pay said tax certify that fact to the attorney general of the state, who shall thereupon begin an action against such company in the court of common pleas of Franklin county, Ohio, or in the court of common pleas of any other county in said state, as he, the attorney general may elect, to recover the amount of said tax. Provided, that upon any such company ceasing to do business in this state, it shall thereupon make report to the superintendent of insurance of the gross amount of premiums, not theretofore reported as provided in this section, received by it in the state, prior to such discontinuance of business after deducting return premiums and considerations received for reinsurance, not theretofore so reported, and shall forthwith pay to the said superintendent of insurance the same per centum of tax thereon. If any such company shall refuse to pay said tax, upon demand being made therefor, it shall be liable to the state of Ohio at the suit of the attorney general, to a penalty of not more than five hundred dollars per month for each and every month such company has failed, after demand therefor, to pay such tax. Service of process in any such action shall be made according to the requirements of the Revised Statutes governing suits brought against such company by a policy holder therein.

[**Retaliatory provision.**] If the laws of any other state, territory or nation authorize charges for the privilege of doing business therein, or taxes against any insurance companies, which are, or may be organized in this state, exceeding the charges herein provided, the same shall be charged against all insurance companies of such state, territory or nation, doing business in this state, in place of the charges herein provided.

[**Examination of books of company.**] If, at any time, said superintendent has reason to suspect the correctness of any such statement he may, at the expense of the state, make an examination of the books of such company, or of its agents, for the purpose of verifying the same. All taxes collected under the provisions of this section by the superintendent of insurance shall be paid by him, upon the warrant of the auditor, into the general revenue fund of the state.

[**Deposits with superintendent, return of under §§ 2744, 2734.**] Insurance companies and associations, incorporated by the authority of another state or government, or the superintendent of insurance, shall not be required to make returns of deposits of such companies or associations, made as required by law, with such superintendent of insurance for the benefit and security of policy holders,

and shall not be governed, in respect to such deposits, by the provisions of section 2744, or of section 2734 of the Revised Statutes of Ohio. [1904, April 25; 95 v. 290; 91 v. 91; 90 v. 201; 86 v. 274; 85 v. 183; R. S. of 1880; 73 v. 139, § 16.]

For the annual valuation of outstanding policies, etc., by superintendent of insurance, see § 279.

This section prescribes the rate of taxation upon every foreign insurance company doing business in this state. The last clause of § 282 is operative only when it is shown that the law of the state where such company is organized taxes Ohio companies doing business there at a rate higher than foreign companies are taxed by the mode provided by § 2745. In such case the foreign company, in addition to the tax on the gross receipts, should be taxed in such additional sum as will be sufficient to make the total equal to the amount that would be realized were the rule of the state where the company was organized applied to its transactions in this state, but no more: State ex rel. v. Reinmund, 45 O. S. 214.

As to amount to be paid, see State ex rel. *v.* Hahn, 50 O. S. 714.

The superintendent may exercise the power of revoking or declining to renew a license by virtue of this section, although an action brought by him for the taxes is still pending: Ohio ex rel. *v.* Insurance Company, 58 O. S. 1.

Applies to mutual fire insurance companies, but not to assessment life and accident associations and not to fraternal beneficiary associations: Atty. Genl. opinion, Dec. 27, 1900.

Sec. 2745*a*. [**Insurance policy on Ohio property not to be placed in agency outside of state.**] It shall be unlawful for any insurance company or agent legally authorized to transact insurance business in the state of Ohio to write, place or cause to be written or placed, any policy, renewal of policy, contract for insurance upon property situated or located in the state of Ohio, except through a legally authorized agent in the state of Ohio, who shall countersign all policies so issued and enter the payment of the premium upon his record, and the writing, renewal, placing or causing to be written or placed any policy of insurance in any other manner or form is hereby declared to be a violation of the law providing for the payment of taxes by foreign insurance companies doing business in the state of Ohio, as set out and provided in section 2745 of an act passed by the General Assembly of the state of Ohio, April 12, 1889 (88 v. 487).

[**Reinsuring, ceding, pooling or dividing risk with unauthorized foreign company forbidden.**] And no fire insurance company or association authorized to do business in this state shall reinsure, dispose of, cede, pool, divide or in any manner or form whatsoever, reduce any portion of its risk or liability, covering property located in whole or in part in this state, in or with any company, association, person or persons whatever, incorporated or otherwise, not authorized by law to do the business of fire insurance in this state, or to reinsure, or assume as a reinsuring company or otherwise, in any manner or form whatsoever, the whole or any part of any risk or liability, covering property located in whole or in part in this state, of or for any insurance company, association, person or persons, incorporated or otherwise, not authorized by law to do the business of fire insurance in this state.

[**Annual report required of chief officer of company, or association.**] It shall be the duty of the superintendent of insurance of this

state annually, and at such times as he may see fit, to require the president or other chief officer of each company or association, to file a statement under oath, showing the names of each fire insurance company, or association, with whom or for whom any liability for insurance on property located in whole or in part in this state has been reinsured, disposed of, ceded, pooled, divided, or in any manner or form whatsoever reduced or increased. [94 v. 299; 88 v. 487.]

Sec. 2745*b*. [**Revocation of license for violating above.**] That any company or companies violating the provisions of section 2745*a* of this act upon notice and satisfactory proof thereof being made to the superintendent of insurance of the state of Ohio, shall have its or their authority to transact business in the state of Ohio revoked for a period of not less than ninety days; and any insurance company whose license to do business in the state of Ohio may be so revoked by the superintendent of insurance of the state of Ohio, shall not be again permitted to do business in the state of Ohio, until all taxes and penalties due thereon shall have been paid, together with any expense that may be due under the provisions of this bill, to the superintendent of insurance of the state of Ohio; and such company shall only be readmitted to transact business in the state of Ohio upon a complete recompliance with the laws now in force in regard to the admission of insurance companies to do business in Ohio. [88 v. 488.]

Sec. 2745*c*. [**Superintendent of insurance to inspect company charged with violating law.**] That when notice of any violation of the first section of this act is received by the superintendent of insurance of the state of Ohio, [that] it shall forthwith be his duty in person, or by deputy, to visit the office of such company or companies where such contract of insurance may have been written or made, and demand an inspection of the books and records of such company or companies; any company or companies refusing to exhibit its or their books and records for his inspection shall be deemed guilty of violating the provisions of the first section* of this act, and the penalties provided in this act shall immediately be enforced against such company or companies, by the superintendent of insurance of the state of Ohio. [88 v. 488.]

*The first section includes section 2745 a, b, c, and d.

Sec. 2745*d*. [**Expenses of inspection.**] The superintendent of insurance of the state of Ohio shall receive, as a compensation for the services rendered under the provisions of this act, his necessary expenses, which sum shall be charged against the company or companies so visited by him, and shall be collected from such company or companies by suit in any court of competent jurisdiction. [88 v. 488.]

Where Actions May Be Brought.

Sec. 2843. [Unlawful to act as agent of or perform services for certain companies when taxes due and unpaid for twenty days; penalties.] If the taxes assessed against any express company, telegraph company, telephone company, or insurance company, in any county in this state, shall remain due and unpaid to the treasurer of such county, for the period of twenty days after the time provided by law for the payment thereof, it shall be unlawful for any person or persons, or corporation, to act as agents, or do or transact any business for such company so in default to such county, until said tax, and interest, and penalty is fully paid; any person, or agent, manager or clerk of any corporation, who shall, after such default, directly or indirectly act as agent of, or do or transact any business whatever on account of or for the benefit of such company so in default, other than the payment of said tax, shall be held to be guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than one hundred nor more than five hundred dollars, or punished by imprisonment in the county jail, and fed on bread and water only, not exceeding thirty days, or both, at the discretion of the court; after such default, made as aforesaid, any railroad company which shall, directly or indirectly, convey or carry for said defaulting express, telegraph, telephone company or insurance company, any package of money, merchandise, or other articles, or transmit any telegraphic message, after having notice of such default, shall, for every such offense, forfeit and pay a sum equal to the amount of such tax due and unpaid, with the interest and penalty thereon, to be recovered by an action in the name of the state, in the county where such tax is assessed, with costs of suit. [1885, March 20: 82 v. 92; Rev. Stat. 1880; 59 v. 91, § 7; (S. & S. 770).]

Quoted Ratterman v. Express Co., 49 O. S. 608, 616.

WHERE ACTIONS AGAINST CORPORATIONS MAY BE COMMENCED.

Sec. 5023. [Actions against corporations other than those mentioned in sections 5019 to 5023; where to bring.] An action other than one of those mentioned in the four preceding sections, against a corporation created under the laws of this state, may be brought in the county in which such corporation is situated, or has or had its principal office or place of business, or in which such corporation has an office or agent, or in any county in which a summons may be served upon the president, chairman or president of the board of directors or trustees or other chief officer;

[Insurance company.] but if such corporation is an insurance company, the action may be brought in the county wherein the cause of action, or some part thereof, arose;

[Mining company.] and if such corporation be organized for the

purpose of mining or operating for petroleum oil or gas, either exclusively or in connection with other business, the action may be brought in any county where such corporation owns or operates a mine or a well for petroleum oil or gas, and the cause of action, or some part thereof, arose. [74 v. 29, § 48; (S. & C. 960); S. & S. 541; R. S. of 1880, § 5026; 82 v. 5; 93 v. 125; 94 v. 270; 95 v. 237, § 5023.]

Original § 5023 R. S. of 1880, is now § 5020.

This section was not intended to apply to statutory actions in which a different rule or mode of proceeding is specially authorized: Muskingum Co. Infirmary *v.* Toledo, 15 O. S. 409, 411.

Applies to life as well as fire insurance companies. Action may be brought in county where death of the insured occurred: Insurance Co. *v.* Pyers, 36 O. S. 544.

Applies to a corporation under a special charter, which has brought itself under the general laws: Knox Co. Mut. Ins. Co. *v.* Bowersox, 6 C. C. 275, 278.

A municipality located in two counties may be sued in either county: Fox *v.* Fostoria, 14 C. C. 476.

The word "may" in this section should be read "must:" Kinsey *v.* Burgess Steel & Iron Works, 4 N. P. 293; 6 O. D. 446.

The appearance in court of the defendant corporation for the purpose of objecting by motion to the jurisdiction over the person is not an appearance in the cause: *Id.*

If it had been as to the merits of plaintiffs' case, or as to the jurisdiction of the subject matter, or upon any other ground, it would be an appearance: *Id.*

HOW SERVICE OF PROCESS UPON INSURANCE CORPORATIONS MAY BE MADE.

(IN CIVIL ACTION.)

Sec. 5042. [**On insurance company.**] When the defendant is an insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency. [51 v. 57, § 67; S. & C. 963; R. S. of 1880, § 5045; 94 v. 273, § 5042.]

Original § 5042 R. S. of 1880, is now § 5039.

See Heart *v.* Insurance Co., 26 O. S. 594.

A policy of marine insurance was issued by a corporation of the state of Connecticut, also doing business in Ohio. The cargo was sunk in waters of the state of Michigan: Held, that a breach upon the part of the insurer constitutes a cause of action against the company, cognizable by the courts of this state: Handy v. Insurance Co., 37 O. S. 366.

Sec. 5043. [**On foreign corporation.**] When the defendant is a foreign corporation, having a managing agent in this state, the service may be upon such agent. [51 v. 57, § 68; S. & C. 963; R. S. of 1880, § 5046; 94 v. 274, § 5043.]

Original § 5043 R. S. of 1880, is now § 5040.

As to service of summons before a justice of the peace, see § 6480.

Foreign corporation must designate person upon whom or where summons can be served, § 148*d*.

If foreign corporation is in receiver's hands, see §§ 4988, 4991.

What constitutes a "managing agent" within the meaning of this section: Am. Ex. Co. *v.* Johnson, 17 O. S. 641.

Section 68 of the Civil Code, cited in Handy *v.* Insurance Co., 37 O. S. 369.

(IN ACTION BEFORE MAGISTRATE.)

Sec. 6479. [**Insurance company.**] Where the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency. [51 v. 179, § 16; S. & C. 744.]

Sec. 6480. [**Foreign corporation.**] Where the defendant is a foreign corporation, having a managing agent in this state, the service may be upon such agent. [51 v. 179, § 17; S. & C. 774.]

PENAL STATUTES APPLICABLE TO INSURANCE CORPORATIONS, THEIR AGENTS AND OTHER PERSONS.

Sec. 6831. [**Arson.**] Whoever maliciously burns, or attempts to burn, any dwelling house, kitchen, smokehouse, shop, office, barn, stable, storehouse, warehouse, railroad coach or car, malt house, still-house, mill, pottery or any other building, the property of another person, or any church, meeting house, courthouse, workhouse, schoolhouse, jail or the Ohio penitentiary, or any shop, storehouse or building, within the inclosed walls thereof, or any other public building, or any ship or other water craft, or any toll bridge or any part thereof, erected across any river, wholly or partly within this state, or any other bridge erected across any of the waters within this state, or sets fire to or attempts to set fire to anything in or near to any such building, coach or car, water craft or bridge, with intent to burn the same, shall, if the value of any such building, coach or car, water craft or bridge, burned, attempted or intended to be burned, is fifty dollars or more, be imprisoned in the penitentiary not more than twenty years, or if the value is less than that sum, be fined not more than two hundred dollars, or imprisoned not more than thirty days, or both. [1889, January 15: 86 v. 3; 83 v. 81; Rev. Stat. 1880; 33 v. 33, §§ 12, 13; 60 v. 85, §§ 1, 2; 66 v. 122, § 1; (S. & C. 406; S. & S. 267, 268).]

Arson—Threatening for purpose of extortion, see § (6830—3).

Procuring another to burn a warehouse, the property of a third person, by a person in possession, held to be an offense within §§ 12 and 36 of the crimes act of 1835: Allen v. State, 10 O. S. 287.

A house used exclusively for storing goods is a warehouse, although the building had been constructed and formerly used for another purpose: Ib.; Thalls v. State, 21 O. S. 233.

So, if used alone for storing the tenant's goods: Allen *v.* State, *supra.*

A room occupied as a news depot may be described as a "storehouse:" Bauer v. State, 25 O. S. 70.

A tobacco house, a building erected upon a farm for the purpose of storing and drying tobacco, and used for that purpose, may be the subject of burglary, under the act defining that crime, and may be described in an indictment as a "barn:" Ratekin *v.* State, 26 O. S. 420.

Where the indictment charged the burglarly of a barn, and the evidence showed the breaking into a storehouse within the barn, see Walters *v.* State, 39 O. S. 216.

Sufficiency of evidence: Searles v. State, 6 C. C. 331, 347.

Sec. 6832. [**Burning property with intent to prejudice insurer.**] Whoever maliciously burns or sets fire to any dwelling house, kitchen, smokehouse, shop, office, barn, stable, storehouse, warehouse, still-house, mill, pottery, or any other building, of the value of fifty dollars, or any goods, wares, merchandise, or other chattels, of the value of fifty dollars, the same being his own property, and insured against loss or damage by fire, with intent to prejudice the insurer, shall be imprisoned in the penitentiary not more than twenty years. [57 v. 49, §§ 1, 2; S. & C. 457*a*; S. & C. 457*b*.]

An indictment is not defective in not stating that the barn was insured for at least fifty dollars. The value of the property, and not the amount of the insurance thereon, must be fifty dollars: Elliott *v.* State, 36 O. S. 323.

An accomplice in this crime, not being the owner, could not be indicted under this section: Searles v. State, 6 C. C. 331, 344.

Sec. 7078. [False statement by medical examiner of insurance company.] A medical examiner for any life insurance company, or for any person seeking insurance therein, who knowingly makes any false statement or report to such company, or any officer thereof, concerning the health or bodily condition of any applicant for insurance, or concerning any other matter or thing which might affect the granting of such insurance, shall be fined not more than five hundred dollars, or imprisoned not more than three months. [69 v. 159, § 31.]

Sec. 7084. [Fraudulently obtaining money from insurance companies; penalty.] Whoever obtains or attempts to obtain from any life or accident insurance company, any sum of money on any policy of life or accident insurance issued by any company in this state, by falsely and fraudulently representing the person insured to be dead; or procures any policy of insurance to be issued to or in any fictitious or assumed name and falsely represents the fictitious person so insured to be dead, and thereby obtains or attempts to obtain from such company the amount of such insurance or any part thereof; or obtains insurance upon the life of any person not himself actually applying for such insurance; or attempts to obtain insurance upon another life for his benefit at the death of any such person without the knowledge of such person to be insured; or falsely obtains or attempts to obtain from any such company any sum of money upon any policy of such company by means of any false and fraudulent written representation or affidavit, that the person whose life was insured is dead, or that the person insured against accident is injured, shall be imprisoned in the penitentiary not more than fifteen years; provided, that when the thing obtained or attempted to be obtained is a sum of money, and less than thirty-five dollars, the person convicted shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. [1888, March 27: 85 v. 119; Rev. Stat. 1880; 64 v. 229, § 1; (S. & S. 273).]

APPENDIX.

The following sections (3631-24 to 3631-38) regulating insurance or stipulated premium plan, were repealed by act of April 22, 1904, except that the repeal does not apply to existing companies, which continue to be regulated by these sections:

(3631—24) Sec. 1. [**Incorporation of companies for life insurance on the stipulated premium plan.**] Five or more persons may, in the manner and according to the forms and requirements for the incorporation of insurance companies mentioned in sections 3588 and 3589 of the Revised Statutes and in this act, become an incorporated company for the purpose of making insurance upon the lives and health of individuals, and every insurance appertaining thereto or connected therewith, on the stipulated premium plan as defined and regulated herein. [93 v. 343.]

(3631—25) Sec. 2. [**Completion of organization.**] No such corporation, company or association shall commence the business of life insurance until at least two hundred persons eligible under the proposed plan of the organization shall have subscribed in writing to be insured therein in the aggregate amount of at least five hundred thousand dollars, and shall have each paid or become obligated to pay the amount of one annual stipulated net premium for their age at entry on the amount of insurance severally subscribed for, and which shall be held in trust for the benefit of the members of said corporation or their beneficiaries; nor until the superintendent of insurance shall have further certified that it has complied with the provisions of this act and is authorized to transact the business of insurance.

[**Deposit of securities.**] Provided, however, that every corporation incorporating or reincorporating under the provisions of this act, shall deposit with the superintendent of insurance in such securities as are required by law to be deposited by insurance companies, the sum of five thousand dollars within one year after date of such incorporation or reincorporation, and such corporation shall each year thereafter, upon filing its annual statement, deposit in like securities with the superintendent of insurance, the sum of two thousand dollars on each millon of insurance in force for the last calendar year, as shown by its said annual statement, until the sum of one hundred thousand dollars shall have been deposited. The securities deposited with the insurance department pursuant to this section

shall be held by the superintendent in trust for the benefit and protection of and as security for the policy holders of such corporation, their legal representatives and beneficiaries. [93 v. 343.]

As to procedure to collect claims from such funds, see § (281—1) et seq.

(3631—26) Sec. 3. [**Life insurance on stipulated premium plan defined; corporations subject to provisions of act; existing statutes.**] Any corporation, company or association which issues any policy, certificate or other evidence of interest to, or makes any promise or agreement with its members whereby any money or other benefit is to be paid to a member, or upon his decease to his legal representative or the beneficiary designated by him, which money or benefit is derived from stipulated premiums collected from its members, or members of a class therein, or from interest or accumulations, and wherein the money or other benefits so realized is applied to or accumulated for the use and purposes of such corporation as herein specified, and the expenses of its management and prosecutions of its business, shall be deemed to be engaged in the business of life insurance upon the stipulated premium plan, and shall be subject only to the provisions of this act, excepting that the provisions of chapter 8, title 3, part 1, and of chapter 10, title 2, part 2, of the Revised Statutes shall be applicable so far as the same are not inconsistent with the provisions of this act. [93 v. 344.]

(3631—27) Sec. 4. [**Existing corporations, etc., may accept provisions of act; how.**] Any domestic corporation, company, association or society, existing or doing business under the provisions of chapter 10, title 2, part 2, of the Revised Statutes, at the time this act takes effect, may, by a vote of a majority of its board of directors or trustees, and upon obtaining the consent of the superintendent of insurance thereto, in writing, accept the provisions of this act, and amend its articles of incorporation to conform with the same, so as to cover and enjoy any and all the provisions or privileges of this act, which might have been included and enjoyed, if it had been originally incorporated hereunder; and it shall file such amendment of its articles of incorporation and the consent required by this section, in the office of the secretary of state, and shall thereafter perpetually enjoy the same and be deemed to have been incorporated under this act.

[**Existing contract or liability of corporation not affected by its reincorporation or acceptance.**] The reincorporating or qualifying of any existing domestic or foreign corporation under the provisions of this act shall in no way annul, modify or change any existing contract, contracts or liabilities of such existing corporation, and any and all such contracts and liabilities shall continue in full force and effect

the same as though such corporation had not reincorporated or qualified under this act.

[**Pending actions or rights unaffected.**] Neither shall the reincorporating or qualifying of any such corporations under the provisions of this act, in any way prejudice, impede, or impair any pending action or proceeding, or any rights previously accrued. [93 v. 344.]

Assessment associations can only re-incorporate as stipulated premium companies upon unanimous consent of the members: Ins. Supt. Ruling, 1901.

(3631—28) **Sec. 5.** [**Minimum premiums.**] Every such corporation, company or association doing business under the provisions of this act shall charge at least a net premium calculated upon the combined experience or actuaries' table of mortality, with interest at the rate of four per centum per annum, equal to that of a yearly term insurance at the age of entry. Such premium shall be increased by a loading of not less than twenty-five per centum, and may be paid anually, semi-annually, quarterly or bi-monthly in advance. [93 v. 345.]

(3631—29) **Sec. 6.** [**Reserve fund.**] Every such corporation, company or association shall accumulate and at all times maintain a reserve fund not less than the net premium, according to the term of premium payment of each policy, upon all its outstanding policies, which net premium shall equal the amount called for by the combined experience or actuaries' table of mortality at the attained age of the insured, computed as specified in section 5 of this act.

[**Impairment of fund remedied.**] If the amount of such reserve fund is at any time reduced to less than such net premium upon all its outstanding policies at the attained age of the insured, or to less than the reserve required by the terms and conditions thereof, such deficiency shall be made up and restored to said fund within three months thereafter.

[**Duty of superintendent in case of failure to remedy impairment.**] Should such impairment of the reserve fund not be made good within three months, then the superintendent of insurance shall require the officers of such corporation to forthwith notify its members to pay, within thirty days from the mailing of such notice, an extra premium sufficient to meet such deficiency apportioned equitably, and any such extra premium shall not be less than the difference between the actual net premium paid, and the net premium at attained age. If any member fails to pay such extra premium within the time named, the corporation shall scale down the policy of each and every member so failing to pay to such an amount as is necessary to make the reserve fund to his credit equal to said unearned premium on his insurance remaining in force, which amount shall be the maxi-

mum for which the corporation shall be liable under said policy. Said thirty days' notice shall clearly state the proportionate amount of the impairment due from the insured and shall contain the further statement that in the event of failure to pay the same within thirty days after the mailing of such notice, said policy will be scaled down as aforesaid. [93 v. 345.]

Policies should contain clause for extra assessment: Ins. Supt. Ruling, 1900.

(3631—30) **Sec. 7.** [**Limited payment policies.**] Any corporation, company or association doing business under this act may issue limited payment policies; provided such policies hereafter issued distinctly state the portion of each of the premiums to be held by, and charged against such corporation for the purpose of sustaining such policies after expiration of the term of years in which the premiums are to [be] paid, which shall not be less than the legal reserve annually according to the actuaries' or combined experience table of mortality with interest at 4 per cent. per annum and which portion at the expiration of such term of years, together with the interest accredited thereto, shall not then nor thereafter be less than the single net premium at the attained age, according to the actuaries' or combined experience table of mortality, with interest at four per centum per annum; and if any such corporation doing business under this act shall not state in its limited payment policies the portion of each of the premiums to be held by it for the purpose of sustaining the insurance after the term of years during which the premiums are to be paid, or if any such corporation shall issue any form of investment policies, then such limited payment or other form of investment policies hereafter issued shall be valued on the basis of the actuaries' or combined experience table of mortality, and interest at four per centum per annum, as provided and contemplated in section 279 of the Revised Statutes. [93 v. 345.]

(3631—31) **Sec. 8.** [**Cash values.**] Any corporation, company or association authorized to do business hereunder, may pay fixed cash values, provided the amount of reserve computed and to be set apart for such cash value is plainly stated in the policy, and provided further that such cash value shall not be in excess of the portion of the premium with interest accretions thereon, collected for such purpose. [93 v. 346.]

(3631—32) **Sec. 9.** [**Distribution of surplus.**] If the cash and invested assets of the corporation, company or association, exceed the reserve fund required by this act, or under the terms and conditions of its policy contracts, and the actual liabilities of said corporation to an amount in excess of ten per centum of such reserve fund, then the amount of such excess may, if the policy contract so provides,

be apportioned by the corporation as a dividend to members, in reduction of premiums, in the purchase of paid up or extended insurance, or may be drawn in cash; or such dividend or dividends may be paid to the beneficiary of a deceased member in addition to the face of the policy. [93 v. 346.]

(3631—33) **Sec. 10.** [**What policy shall set forth.**] Every policy hereafter issued by any corporation, company or association doing business under this act and promising any payment to be made upon a contingency provided for in this act, shall specify the sum of money which it promises to pay upon each contingency insured against, and the number of days after satisfactory proof of the happening of same on which such payment shall be made.

[**Obligation of company to beneficiaries or insured.**] Upon the occurrence of such contingency, unless the contract shall have been avoided by fraud or breach of its conditions, the corporation shall be obligated to the beneficiaries or insured for such payment at the time and to the maximum amount due under the policy.

[**Refusal or failure to pay.**] If the superintendent of insurance shall be satisfied, upon investigation, that any such corporation has refused or failed, after proper demand, to make such payment for sixty days after final judgment has been obtained upon such claim, he shall notify the corporation to issue no new policies until such indebtedness is fully paid; and no officer or agent of the corporation shall make, sign or issue any policy of insurance while such notice is in force. [93 v. 346.]

(3631—34) **Sec. 11.** [**Foreign corporations must procure certificate of authority.**] No corporation, company, association or society organized under the laws of any other state or territory of the United States or the district of Columbia or foreign country, shall transact business under the provisions of this act until it has received from the superintendent of insurance a certificate of authority to do business in this state, a duplicate of which shall be filed in his office.

[**Renewal certificates.**] The superintendent shall annually issue to such foreign corporation, company, association or society, renewal certificates of authority to continue business, if it shall have fully complied with the provisions of this act, and if the superintendent shall be of the opinion that any such corporation, company, association or society is not entitled to a renewal of a certificate of authority, he may in his discretion cite the same to appear, giving reasons therefor, and show cause why the certificate of authority should not be renewed; and unless the certificate of authority shall be renewed within ten days after such hearing, such foreign corporation, company, association or society shall cease to do business in this state.

[**Superintendent may refuse certificate.**] The superintendent may refuse a certificate of authority or renewal of the same to any such foreign corporation, company, association or society, when such refusal will best promote the public interests.

[**Obligations similar to those of other states.**] When any state, territory or foreign country shall impose any obligations upon any such corporation of this state, or their agents, transacting business in such other state, territory or foreign country, the like obligations are hereby imposed upon similar corporations of such other state, territory or foreign country, and their agents or representatives transacting business in this state; and such corporation, company, association or society of such other state, territory or foreign country, and its agents and representatives, shall pay all licenses, fees or penalties to and make deposits with the superintendent of insurance imposed by the laws of such other state, territory or foreign country upon any corporation of this state doing business therein; and in case of failure to pay the same, the superintendent shall refuse the certificate of authority herein provided for or cancel such certificate if one shall have been previously issued.

[**Foreign company to furnish evidence to entitle it to license.**] No foreign corporation, company, association or society shall be authorized to transact any business authorized by this act within this state, unless it furnishes evidence satisfactory to the superintendent of insurance that it has a reserve fund equal in amount to that required by this act, and that the same is held for the benefit of policy holders only, and invested as required by the insurance laws of this state. Neither shall any foreign corporation, company, association or society be authorized to do business in this state unless it collects in advance for the benefit of its policy holders a net premium equal to at least that provided for by the terms of this act. [93 v. 346.]

(3631—35) **Sec. 12.** [**Discrimination prohibited.**] No life insurance corporation, company or association subject to the provisions of this act shall make any discriminations in favor of individuals of the same class or of the same expectation of life, either in the amount of premiums charged or in any return of premiums, dividends or other advantages.

[**Contracts by agents.**] No agent of such corporation shall make any contract for insurance or agreement as to such contract other than that which is plainly expressed in the policy issued.

[**Rebate of premium prohibited.**] No such corporation or agent thereof shall pay or allow, or offer to pay or allow, as an inducement to any person to insure, any rebate of premium, or any especial favor or advantage whatever in dividends to accrue thereon, or any in-

ducement whatever not specified in the policy. If it shall appear to the satisfaction of the superintendent of insurance, after a hearing by him upon due notice, that any corporation is issuing policies or making contracts that are in violation of this section, he shall, upon the written approvel of the attorney general, require such corporation and its officers and agents to refrain, within twenty days, from making any such policy or contract. If any such corporation or officer or agent thereof shall fail to comply with the provisions of this section the superintendent shall institute such proceedings at law as may be necessary to restrain such violation of this section. [93 v. 347.]

(3631—36) Sec. 13. [**Policy holder not personally liable for losses of corporation.**] No person shall incur any personal liability for the losses or liabilities of any corporation, company or association organized or doing business under this act by reason of being a policy holder in such corporation. [93 v. 348.]

(3631—37) Sec. 14. [**Withdrawals of securities upon relinquishment of business.**] When any such corporation, company or association shall desire to relinquish its business the superintendent shall, on application of such corporation under the oath of its president or principal officer and secretary or actuary, give notice of such intention at least twice a week for six months in a newspaper of general circulation published at Columbus. After such publication he shall deliver up to said corporation the securities held by him belonging to it upon being satisfied by an exhibition of the books and papers belonging to such corporation, and on examination by himself or by some competent person to be appointed examiner by him, and upon the oath of the president or principal officer and the secretary or actuary of said corporation, that all its debts and liabilities of every kind are paid and extinguished that are due or may become due upon any contract or agreement made by said corporation or its assignee any portion of such securities on being satisfied in the manner and form hereinbefore required, or upon any other competent proof, that all the debts and liabilities of every kind that are due or may become due are less than the amount or proportion of such securities which he shall still retain. [93 v. 348.]

(3631—38) Sec. 15. [**Taxes.**] Every corporation doing business under the provisions of this act shall be liable for and pay such taxes as other life insurance companies are liable for. [93 v. 348.]

Appendix.

AN ACT

To repeal the act entitled "An act to provide for the incorporation and regulation of corporations, companies or associations transacting the business of life insurance on the stipulated premium plan as herein defined," passed April 25, 1898.

Be it enacted by the General Assembly of the State of Ohio:

Section 1. That the act of the General Assembly of the state of Ohio, entitled "An act to provide for the incorporation and regulation of corporations, companies or associations transacting the business of life insurance on the stipulated premium plan as herein defined," passed April 25, 1898, be and the same is hereby repealed.

Sec. 2. The repeal of said act shall not affect corporations or companies now lawfully transacting the business of life insurance on the stipulated premium plan in this state under authority of said act, and said companies and corporations now so transacting such business under authority of said act shall continue to be authorized and regulated by said act. [Approved April 22, 1904.]

The following sections were repealed April 14, 1888 (85 O. L. 273) except as to premium note mutual companies then doing business which should not re-organize under the amended law as contingent liability companies. Several such premium note companies have not so reorganized and are still operating under these sections:

Sec. 3634. No company shall be incorporated under this chapter with a smaller capital than one hundred thousand dollars, which shall be divided into shares of one hundred dollars each; nor shall any company on the plan of mutual insurance be organized in this state until agreements have been entered into for insurance with at least two hundred solvent applicants, the premiums on whose policies shall amount to not less than fifty thousand dollars, of which at least twenty per cent. has been paid in cash by each applicant on his note, and their notes founded on actual and bona fide applications for insurance have been received for the remainder; no one of the notes received as aforesaid shall amount to more than five hundred dollars, and no two shall be given for the same risk, or be made by the same person or firm, except when the whole amount of such notes does not exceed five hundred dollars; nor shall any note be represented as capital stock unless a policy be issued upon the same within thirty days after the organization of the company, upon a risk which shall be for no shorter period than twelve months; each of the notes shall be payable in part or in whole, at any time when the directors deem the same requisite for the payment of losses by fire, or inland naviga-

tion, and such incidental expenses as may be necessary for transacting the business of the company; and no note shall be accepted as part of such capital stock unless the same be accompanied by a certificate of a justice of the peace of the town or city where the maker of such note resides, that the maker is in his opinion, pecuniarily good and responsible for the same; and no such note shall be surrendered during the life of the policy for which it was given; but nothing in this section shall apply to associations for the mutual protection of their members against loss by fire, heretofore or hereafter organized. [75 v. 561, § 3.]

Sec. 3648. No fire insurance company organized under any law of this state shall make any dividend except from the surplus profits arising from its business; and in estimating such profits there shall be reserved therefrom—

First. A sum equal to fifty per cent. of the whole amount of premiums on unexpired risks and policies, which is hereby declared to be unearned premiums.

Second. All sums due the company on bonds and mortgages, bonds, stocks, and book accounts, of which no part of the principal nor the interest thereon has been paid during the preceding year, and on which an action has not been commenced, or which, after judgment obtained thereon, has remained more than two years unsatisfied, and on which interest has not been paid; and

Third. All interest due or accrued, and remaining unpaid, for which the company does not hold securities as hereinbefore provided.

Any dividend made contrary to the provisions of this section shall subject the company which makes the same to a forfeiture of its charter, and each stockholder who receives it to a liability to the creditors of the company to the extent of the dividend received, besides the other penalties and punishments prescribed by law; but this section shall not apply to the declaration of scrip dividends by participating companies, and no such scrip dividend shall be paid except from surplus profits, after reserving all sums above provided, including the whole amount of premiums on unexpired risks; and the word "year," wherever used in this section, shall be construed to mean the calendar year. [70 v. 147, § 14.]

Sec. 3650. Every person who affects insurance in a mutual company, and continues to be insured, and his heirs, executors, administrators and assigns shall thereby become members of the company during the period of insurance, shall be bound to pay for losses and such necessary expenses as accrue in and to the company in proportion to the amount of his deposit note; the directors shall, as often as they deem necessary, after receiving notice of any loss or damage

by fire sustained by any member, and ascertaining the same, or after the rendition of any judgment against the company for loss or damage, settle and determine the sums to be paid by the several members thereof as their respective portions of such loss, and publish the same in such manner as they may choose or as the by-laws prescribe, and the sum to be paid by each member shall always be in proportion to the original amount of his deposit note, and shall be paid to the officers of the company within thirty days next after the publication of such notice; and every such company shall assess its members on the 30th day of September of each year, sufficiently to liquidate all liabilities of the company existing at the time of the assessment, and no such company shall borrow money or create a debt unless for the purpose of necessary office buildings, to continue beyond the period when such assessment may be collected and applied to the payment thereof, and no member shall be assessed for liabilities incurred prior to his membership. [79 v. 133.]

Sec. 3651. If a member neglect or refuse for the space of thirty days after the publication of such notice, and after personal demand for payment, to pay the sum assessed upon him as his proportion of any loss as aforesaid, the directors may sue for and recover the whole amount of his deposit note, with costs of suit; but execution shall only issue for assessments and costs as they accrue, and every such execution shall be accompanied by a list of losses for which the assessment is made; and if the whole amount of deposit notes be insufficient to pay the loss occasioned by any fire or fires, the sufferers insured by the company shall receive, toward making good their respective losses, a proportional share of the whole amount of such notes, according to the sums by them respectively insured, but no member shall ever be required to pay for any loss occasioned by fire, or inland navigation, more than the whole amount of his deposit note. [69 v. 140, § 16.]

Sec. 3652. In actions for the recovery of assessments duly levied by the directors of any mutual fire insurance companies of this state, or for money due on the premium notes of the members of any such company, the official statement of the president or secretary of such company, under seal, and sworn to, shall be received in court as evidence of the fact that such assessment, for the non-payment of which any such action is commenced, has been so levied, and notice thereof given. [39 v. 35, § 1.]

Sec. 3663. All buildings insured by any mutual company shall be pledged to such company, together with the right and title of the insured in the lands upon which they are situate, to the amount of the premium note to be insured, and the company shall have a lien

thereon to the amount of such note; but the lien of the company shall not take effect until the company files with the recorder of the county in which the property insured is situate a certificate, stating the date, number, and amount of such premium note, and such a description of the property insured as will enable any person readily to identify the same; the recorder shall record and index the certificate in his book of liens, for which he shall receive the sum of fifty cents; and all liens heretofore acquired by any such company shall continue in force under this chapter. [69 v. 140, § 24.]

SECRET BENEVOLENT SOCIETIES.

(But see act regulating fraternal beneficiary associations, Pages 92 to 104.)

Sec. 3796*a*. [**Secret benevolent society empowered to invest reserve funds.**] That any secret benevolent association, or society incorporated under or by the laws of the state, which shall have any reserve or accumulated funds, or moneys, held by them for the purpose of endowment of the widows, orphans, families, blood relatives or heirs of the members of such benevolent society or association, or for purely charitable purposes, shall have the right and power to invest such funds or moneys upon interest and shall take securities for such investment upon real or personal property, or otherwise, as such society or association may deem fit. [94 v. 355; 77 v. 146.]

Sec. 3796*b*. [**May elect trustees to take charge of such funds.**] Any such association or society may elect a board of trustees, consisting of not less than three members, to whom they may entrust the right to manage, control, take charge of, invest, collect, demand, receive and deposit all reserves, surplus or accumulated funds or moneys, which such association or society holds, or may hold, from time to time for the purpose of such endowments as are named in the first section of this act. [1880, April 9: 77 v. 146.]

Sec. 3796*c*. [**Society to fix terms of trustees and define their duties, powers, etc.**] Any association or society as aforesaid, may, by law, define and limit the term of office of each and all of the said trustees; may define the duties and powers of said trustees and of said board of trustees; may remove either one for good cause; may fill all vacancies occurring in said board; shall demand from each of said trustees security for the faithful performance of their several duties, as it may deem fit; shall have power to cause investments to be made by said trustees, in the name or names of either or all of them, and in which name or names suit may be brought; may empower said trustees to discharge, acquit, and release all claims or demands of such association or society upon payment thereof. Such trustees may sue for any claim or demand, for any loan or invest-

ment heretofore made, or hereafter to be made by any such association or society; and upon foreclosure of any mortgage held by such association or society for any investment or loan, may purchase and hold any lands, tenement or interest in land, in fee or otherwise and may lease, rent, sell, and convey the same by deed. [1880, April 9: 77 v. 146.]

Sec. 3796*d*. [**May sue and be sued.**] Any such association or society may sue or be sued, answer or be answered unto, plead or be impleaded in any court in this state. [1880, April 9: 77 v. 146.]

Sec. 3796*e*. [**Society may accept donations; may pay endowment not exceeding $5,000.**] Any such association or society shall have power to accept and receive any donation or voluntary contribution, may collect its assessments, which shall not exceed one-fifth of one per centum of the amount payable at the death of a member; may pay endowments in the mode and to the persons named and provided by its laws but in no case exceeding in the aggregate five thousand dollars on the death of any one member. [1880, April 9: 77 v. 146.]

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The word "foreign" when applied to a corporation and not accompanied by other qualifying words, indicates a non-Ohio corporation.

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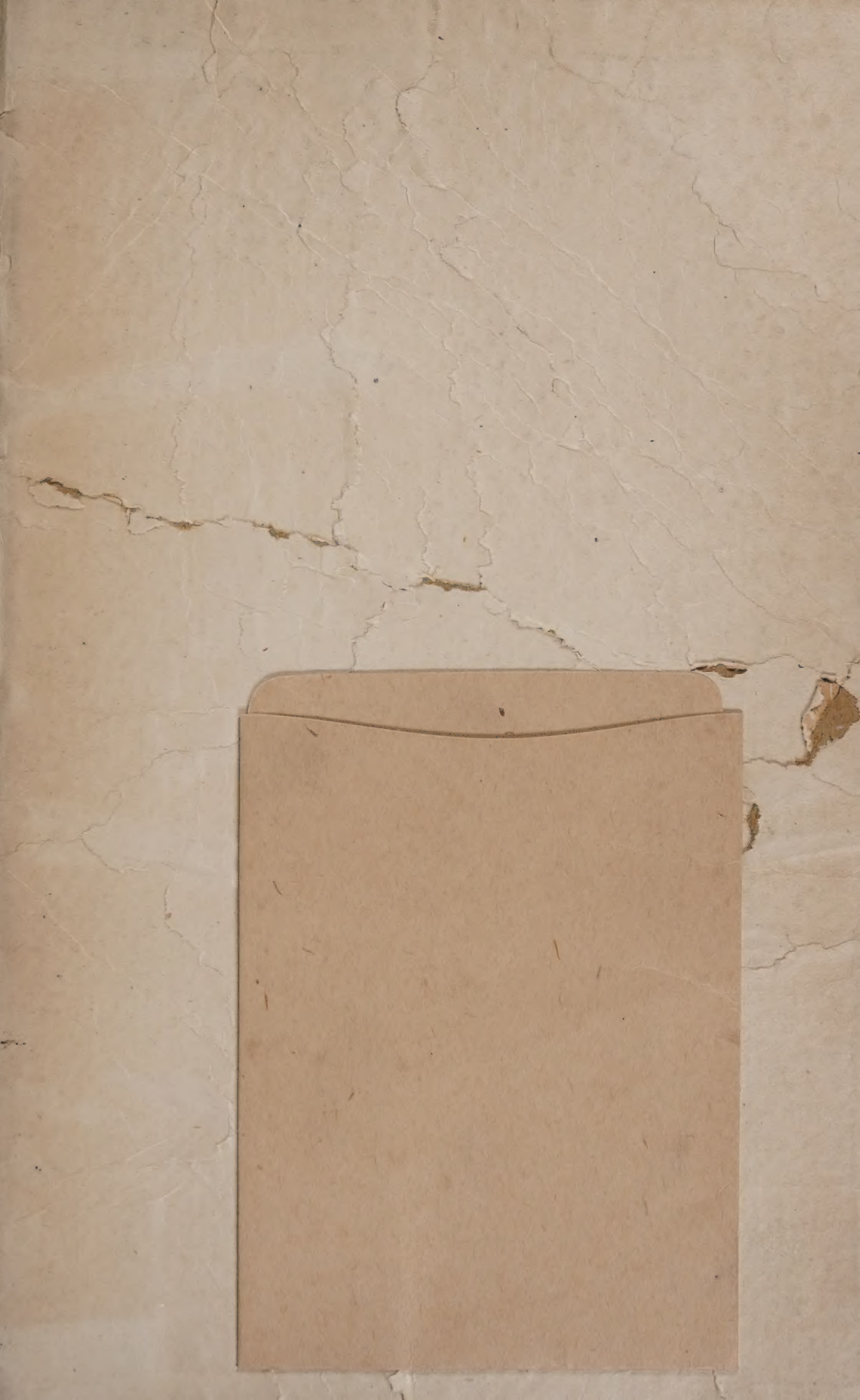

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